



Anti-money laundering and counter-terrorist financing measures Romania

Fifth Round Mutual Evaluation Report

May 2023



The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism - MONEYVAL is a permanent monitoring body of the Council of Europe entrusted with the task of assessing compliance with the principal international standards to counter money laundering and the financing of terrorism and the effectiveness of their implementation, as well as with the task of making recommendations to national authorities in respect of necessary improvements to their systems. Through a dynamic process of mutual evaluations, peer review and regular follow-up of its reports, MONEYVAL aims to improve the capacities of national authorities to fight money laundering and the financing of terrorism more effectively.

The fifth round mutual evaluation report on Romania was adopted by the MONEYVAL Committee at its 65th Plenary Meeting (Strasbourg, 24 – 26 May 2023).

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EXECUTIVE SUMMARY

1. This report provides a summary of the anti-money laundering and combating financing of terrorism (AML/CFT) measures in place in Romania as at the date of the onsite visit (21 September to 4 October 2022). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Romania's AML/CFT system and provides recommendations on how the system could be strengthened.

Key Findings

a) Romania demonstrates a fair understanding of money laundering (ML) risk, although understanding of terrorist financing (TF) risk is developed to a lesser degree. Necessary arrangements for domestic cooperation and coordination are in place, however, due to their recent nature effectiveness is yet to be demonstrated. Domestic coordination extends to financing of proliferation of weapons of mass destruction (PF). The authorities are starting the process aimed at effective risk mitigation.

b) A wide range of financial, administrative and law enforcement information is collected and accessible to the law enforcement agencies (LEAs), prosecutors and intelligence services. However, financial intelligence is accessed and used only to some extent. A lack of technical resources and limited human resources allocated to the financial intelligence unit in the National Office for the Prevention and Control of Money Laundering (NOPCML-FIU) hampers the quantity and quality of financial intelligence provided by the NOPCML-FIU to support the operational and strategic needs of its partners. A shortage of financial investigators and the quality of information in certain databases (e.g., beneficial ownership (BO) registers) impact competent authorities' abilities to use the information to conduct their analysis and financial investigations, to identify and trace assets, and to develop operational analysis. The competent authorities use the information to mainly investigate predicate offences rather than ML.

c) Romania has no overarching national AML/CFT strategy ensuring a consistent approach and methodology in AML/CFT across all areas. Insufficient communication, cooperation and systematic coordination was demonstrated between the various prosecutors' offices. The investigation and prosecution of ML is not pursued as a priority overall. The laundering of tax predicates and the laundering of the proceeds of corruption are adequately resourced and effectively conducted. Investigations and prosecutions into the trafficking of humans and drugs focus on the predicate crimes rather than the laundering of those predicates. The authorities tasked with investigating these predicates and the ML of these predicates would benefit from greater specialised resources and training. When there are convictions for ML these tend to be for self-laundering and there are very few third party ML convictions or standalone prosecutions. Sanctions applied by the Court for the ML offence seem low and not dissuasive.

d) Romania actively applies measures for confiscating criminal proceeds and its instrumentalities from domestic predicates located in Romania for most prevalent predicates, while effective confiscation of proceeds from foreign predicates, proceeds located abroad, in third party and standalone cases are rare. Additional resources for conducting financial investigations as well as practical guidance and training for prosecutors and LEAs are needed to pursue confiscation of criminal proceeds in more complex cases. Confiscation of suspicious cross border transportation of cash is not pursued as a policy objective and the amount of

falsely detected or undeclared cross-border transactions of currency are low, and sanctions applied (fine or confiscation) are rare and not dissuasive.

e) A full understanding of the specific roles which might be played by the terrorist financier was not demonstrated. The National Terrorism Strategy dates from 2002 and there is no specific policy for TF. The concentration of the relevant agencies – the Romanian Intelligence Service (RIS) and the Directorate for the Investigation of Organised Crime and Terrorism (DIOCT) – is mainly on the prevention and disruption of terrorism rather than on detecting, investigating, and prosecuting TF *per se*. The Romanian authorities have successfully detected, investigated, prosecuted, and obtained a conviction for one case of TF and, to that degree, have had the opportunity to demonstrate and have demonstrated the effective investigation and prosecution of TF.

f) Although banks and larger financial institutions (FIs) demonstrate a fair understanding of targeted financial sanctions (TFS) requirements and implementation practices, designated non-financial businesses and professions (DNFBPs) and virtual asset service providers (VASPs) have less understanding of TFS requirements, which might potentially cause implementation gaps. Detection of indirect links and close associations with sanctioned entities and individuals is a concern in all sectors. There is no risk-based regulatory and oversight framework for the non-profit sector.

g) In general, banks demonstrated a good understanding of ML and TF risks. Understanding of ML risks in non-bank FIs, including payment institutions (PIs), was also generally good, but understanding of TF risk is less developed. Customer due diligence (CDD) measures applied by obliged entities are generally risk-based, but this is not the case for exchange offices and most DNFBPs. Outside banks and PIs, too much reliance is placed on self-declarations and domestic registers of beneficial owners to find out and verify the BO of customers that are legal persons. Reporting is concentrated in three sectors: banks, money, or value transfer service (MVTs) operators and notaries. Other sectors account for a negligible number of suspicious transaction reports (STRs) - where there is evidence of under-reporting of suspected ML/TF and no specific focus is given to scenarios for detecting and reporting TF. There are gaps in the scope of application of AML/CFT requirements to VASPs.

h) The National Bank of Romania (NBR) and Financial Services Authority (FSA) apply effective “fit and proper” entry checks. More limited market entry controls are in place elsewhere, including for VASPs and there is no authority with a clear responsibility for proactively identifying unlicensed banking or payment services activity. Overall, a more granular analysis is needed of inherent risk at sectoral and institutional levels. The most robust AML/CFT risk-based approach (RBA) is applied by the NBR, which supervises the most material FIs. NBR engagement is very frequent, but it operates on a rather *ad hoc* basis. ML/TF risks are taken into consideration to some extent by the FSA and the NOPCML. The supervision of VASPs has only recently started. Remedial measures are applied as a rule and effectiveness of sanctions has not been demonstrated.

i) Whilst understanding of risk of abuse of legal persons is greater than that in the national risk assessment (NRA), the level of risk is higher than recognised by the authorities (medium level), at least to some extent. Important steps have been taken to prevent misuse of legal persons, including the development and use of public registries. Implementation of this comprehensive framework is still work in progress, but the level of progress is substantial.

Greatest reliance is placed by competent authorities on BO information provided and held by banks, and around 80% of legal persons created under Romanian legislation hold a bank account in the country. The absence of aggregated statistics on findings on the application of CDD measures by banks makes conclusions on the accuracy and currency of information held by this source difficult.

j) Although Romania has a sound legal framework for international cooperation, a significant lack of reliable data and statistics hinders the authorities' ability to demonstrate effectiveness in this area. Romania does not have a central case management system in place, nor formalised guidelines for prioritisation of incoming requests. This significantly hinders the authorities' ability to monitor and follow up requests for assistance. However, feedback from the FATF Global Network was generally positive – assistance provided to other countries in most cases is constructive and delivered on a timely basis.

Risks and General Situation

2. The most prevalent domestic predicate offences detected in Romania are: (i) tax evasion; (ii) corruption; (iii) fraud, including cyber-crimes; (iv) smuggling; (v) human trafficking; and (vi) drug trafficking. In addition, a significant number of environmental crimes are reported each year. Organised criminal groups (OCGs) operate in Romania, manifesting themselves in most sectors of economic and social life, including tax evasion, cyber-crime, drug trafficking, and human trafficking. Corruption represents a challenge at national and regional level. Low socio-economic conditions in Romania, compared to many other European countries, interpolated with other demographic and cultural risk factors, continue to contribute to continuous activity in the sphere of trafficking of Romanian citizens.

3. OCGs of Romanian origin operating abroad present the main foreign ML threat, with indications that criminal proceeds are transferred through the Romanian financial system and invested in Romania. Romania is also a transit space for trafficking of high-risk drugs. In the case of human trafficking, cyber-crime and drug trafficking, criminal activity is often committed abroad, and illicit funds transferred to Romania.

4. The use of cash is the main method of ML at national level. Romania's economy is cash-based, and the size of the underground economy is around 30% of GDP. Romania's financial sector remains dominated by banks, and non-bank sector remains underdeveloped. The customer base is predominantly domestic and there is an absence of complex products.

5. No home-grown terrorism has been identified to date, no terrorist organisations or cells are known to be active in the country, and there have been no terrorist attacks. Currently, jihadist (self-) radicalisation is the main risk to Romania's national security and is a constant concern from a security perspective.

Overall Level of Compliance and Effectiveness

6. Romania has taken steps since its last evaluation to remedy the deficiencies identified during that process – the country has strengthened its legal and regulatory framework and conducted its first comprehensive NRA which was adopted in September 2022 (based on data for the period 2018 to 2020).

7. In most respects, the elements of an effective AML/CFT system are in place, but the practical application of the existing framework has still to be improved to reach a substantial level of compliance. These improvements should, inter alia, include: (i) improving national efforts aimed at mitigating risks; (ii) increasing/improving resources and training for the NOPCML-FIU and LEAs to ensure better access and use of financial intelligence; (iii) increasing the capacity of financial investigators to carry out parallel financial investigations and trace assets, and issuing practical guidance to prosecutors to improve investigation and prosecution of ML and confiscation of assets; (iv) developing an overarching national CFT strategy and ensuring/providing relevant resources and training; (v) developing risk-based regulation and an oversight regime over the non-profit sector (vi) providing further guidance to obliged entities on sector specific risk factors and “red flags” for transaction monitoring; (vii) more sophisticated calibration of NBR supervisory actions with risk, greater recognition of AML/CFT oversight by the FSA and increase in NOPCML resourcing in order to align with statutory responsibilities; (viii) further development of existing controls to ensure the accuracy and currency of information held in BO registers; and (ix) developing case management systems in the field of international cooperation.

8. In terms of technical compliance, the legal framework has been enhanced in many aspects nevertheless, some issues remain, including: (i) measures applied to VAs and VASPs (R.15); (ii) regulation and supervision of DNFBPs (R.22 and R.28); (iii) cash couriers (R.32); and (iv) sanctions for failing to comply with AML/CFT requirements (R.35).

Assessment of risk, coordination, and policy setting (Chapter 2; 10.1, R.1, 2, 33 & 34)

9. Authorities demonstrate a fair understanding of ML risks to which Romania is exposed, however, understanding of TF risks is developed to a lesser degree. Inherent sectorial risks are fairly well understood in the financial sector, and less so in the DNFBP sector. In some areas, understanding of ML/TF risks is more developed than the NRA report suggests. Risk understanding is hindered by the lack of comprehensive statistical data and areas where risks are not assessed in sufficient depth, such as non-profit sector exposure to TF, risk assessment of legal persons, TF risk, etc. Thus, there is a need for more in-depth analysis of certain factors or information in some areas.

10. There is no overarching AML/CFT strategy in the country. Although a large number of strategies (aimed at combating various crimes, such as corruption, trafficking in drugs and humans, organised crime, etc.) have been drawn up, which generally mirror the risk environment of Romania, information on the level of risk mitigation achieved is not comprehensive.

11. Although at the time of the on-site visit the authorities were still in the midst of drafting an action plan – a document aimed at targeting risks identified in the NRA report- a number of risk mitigating actions had been undertaken by the authorities prior to commencing the NRA, such as: (i) actions to combat corruption; (ii) NOPCML-FIU reforms relating to capacity building in the area of financial intelligence and supervision - increasing supervisory staff by 100% and moving to new better-equipped premises); and (iii) reducing cash-related risks, etc.

12. The Interinstitutional Council (IC) is tasked with the coordination role for AML/CFT matters, including risk assessment and mitigation. However, the effectiveness of its work is yet to be seen, as set up of the IC is quite recent and the work on mitigation by various competent authorities has just begun.

13. Romania does not apply any statutory exemptions from the FATF Standards to covered FIs, DNFBPs and VASPs. Simplified and enhanced due diligence measures are in line with the

general country risk environment. Obligated entities are required to conduct business wide risk assessments (BRAs) and apply mitigating measures largely in line with the FATF Standards. Several awareness raising events to discuss national risks followed the publication of the NRA, however, these actions were taken after the on-site visit.

Financial intelligence, ML investigations, prosecutions and confiscation (Chapter 3; IO.6, 7, 8; R.1, 3, 4, 29–32)

14. Romania has significantly improved access to financial intelligence since the last mutual evaluation. Since the adoption of a revised AML/CFT Law in 2019, reports to the NOPCML-FIU are filed through dedicated reporting channels, and direct access to different government databases has increased, including for LEAs. However, significant improvements are necessary to increase the effectiveness of the system. These include increasing/improving information and communication technology resources, human resources, and training for the NOPCML-FIU as well LEAs. In particular, a shortage of financial investigators and the quality of information in certain databases (e.g., BO registers) impact competent authorities' abilities to use the information to conduct their analysis and financial investigations, to identify and trace assets, and to develop operational analysis.

15. Romania's legislation covers the technical criteria required by the FATF Standards with respect to investigation and prosecution of ML while the effectiveness of the system is restricted by various elements. The investigation and prosecution of ML is not pursued as a priority overall and the total number of ML investigations and convictions in Romania is low. Insufficient communication, cooperation and systematic coordination was demonstrated between the various prosecutors' offices. Although investigations and prosecutions into the laundering of tax predicates and the laundering of the proceeds of corruption are effectively conducted, investigations and prosecutions into the trafficking of humans and drugs focus on the predicate crimes rather than the laundering of those predicates. Some types of predicates are reliably accompanied by a parallel ML investigation; other types of predicate investigation routinely are not. Third party ML cases and standalone ML prosecutions are rare. For some key areas, the ML offences investigated and prosecuted therefore do not appear commensurate with the identified ML risks of the country. When there are convictions for ML, the sanctions applied by the Court for the ML offence sometimes seem low and not dissuasive. The lack of a national AML/CFT strategy, absence of practical guidance to prosecutors as well as lack of financial investigators are the main reasons why there is an inconsistency in approach to investigating and prosecuting ML.

16. Since the previous evaluation round, Romania has improved its ability to freeze, seize and confiscate the proceeds and instrumentalities of crime. It has adopted the National Asset Recovery Strategy, which establishes a joint national framework aimed at increasing the efficiency of recovering crime instrumentalities and proceeds. Romania actively applies existing measures for confiscating the criminal proceeds and instrumentalities from predicates located in Romania for most prevalent predicates. Confiscation of criminal proceeds from foreign predicates, located abroad, in third party and standalone cases are rare and the reasons for it are related to lack of financial investigators, as well as practical guidance and training for prosecutors and LEAs, that hampers pursuing confiscations in more complex cases. Romania has effective measures in place enabling the authorities to preserve the value of seized and confiscated proceeds and instrumentalities. Authorities are detecting and confiscating falsely or undeclared cash, however not as much as it would be expected from a country that intensively uses cash. Sanctions imposed for failing to declare cash at the border are not dissuasive enough.

Terrorist and proliferation financing (Chapter 4; IO.9, 10, 11; R. 1, 4, 5–8, 30, 31 & 39.)

17. Romania's TF offence is broadly in line with the required standards. The concentration of the relevant agencies – RIS and DIOCT - was on terrorism rather than TF *per se*. The National Terrorism Strategy dates from 2002 and authorities lacked any meaningful strategy or policy concentrating specifically on TF. A full understanding of the specific roles which might be played by the terrorist financier was not demonstrated evenly. The risks presented by cross-border movements of cash and difficulties in detecting such movements for TF purposes were downplayed. The Romanian authorities have successfully detected, investigated, prosecuted, and obtained a conviction in one case of TF. This has been achieved even though the case involved an international element and the amount concerned was small. It is difficult to generalise, based on one case, but the sanction imposed in Romania's TF case could not be said to be dissuasive. That said, the Romanian authorities have had the opportunity to demonstrate and have demonstrated the effective investigation and prosecution of TF.

18. Romania makes use of a combination of national and supranational (at European Union (EU) level) mechanisms to implement TFS. Mechanisms for PF and TF do not differ. Through national legislation, all United Nations (UN) Security Council Resolutions (UNSCRs) are directly binding on all individuals and entities from the moment of their adoption (entry into force). Romania has not identified any individuals or entities for designation or proposed any designations to the 1267/1989 Committee or the 1988 Committee. Romania has not identified any individuals or entities for designation or proposed any designations to the 1267/1989 Committee or the 1988 Committee. Romania has never been requested by another country to designate an individual or entity, nor has it proposed any designations pursuant to UNSCR 1373. The National Agency for Fiscal Administration (Fiscal Administration) is the competent authority responsible for issuing freezing orders, unfreezing, and dealing with frozen funds. Although no funds or other economic resources have been frozen in Romania pursuant to UNSCRs (PF-related TFS and TF-related TFS), funds were frozen based on the EU TFS regime which shows a practical functioning of the system.

19. Compliance checks with TFS requirements commonly form a part of full scope AML/CFT examinations (the exception being the NBR that conducts thematic examinations since 2019). In general, all obliged entities are aware of TFS screening obligations and the requirements to freeze funds/assets. Implementation techniques by FIs/DNFBPs vary. Although banks demonstrate quite developed understanding of sanction evasions risk, all obliged entities, including banks, face difficulties identifying close associations (indirect links) with sanctioned entities and individuals.

20. No risk-based regulatory and oversight framework for the NPO sector was in place at the time of the on-site visit. Prerequisites for developing this framework, namely identification of NPOs that fall under the FATF definition and subsequent identification of non-profit organisations (NPOs) vulnerable to TF abuse are missing.

Preventive measures (Chapter 5; IO.4; R.9–23)

21. In general, banks demonstrated a good understanding of ML and TF risks. Understanding of ML risks in non-bank FIs, including PIs, was also generally good, but understanding of TF risk is less developed and there is less understanding of business specific risks by exchange offices. In the DNFBP sector, there was little appreciation of the risks that may be present in offering company services, and notaries underestimate the risks presented by the important gatekeeper role that they play for real estate transactions. Measures have been taken to mitigate the risk that

is presented by use of cash. However, mitigating measures applied by exchange offices are not commensurate with risk.

22. CDD measures applied by obliged entities are generally risk-based. This is not the case for exchange offices and most DNFBPs. Several sectors, including banks and PIs, have implemented effective automated monitoring systems. For DNFBPs, very little focus is given to scenarios aimed at detecting TF. Outside banks and PIs, too much reliance is placed on self-declarations and domestic registers of BO to find out and verify the beneficial owners of customers that are legal persons. Generally, enhanced CDD measures (EDD measures) are being effectively applied. However, the AT is concerned that some politically exposed persons (PEPs) (family members and associates of prominent individuals) will not be identified in all cases since insufficient use is made of public sources and self-declarations in some sectors.

23. Reporting is concentrated in three sectors: banks, MVTs operators and notaries. Other sectors account for a negligible number of STRs - where there is evidence of under-reporting of suspected ML/TF. Outside the banking sector and some MVTs operators, no specific focus is given to scenarios for detecting and reporting TF, except for connections to high-risk countries.

24. Larger FIs have effectively developed three lines of defence, including an independent audit function which covers AML/CFT compliance. Elsewhere, controls and procedures are adequate.

25. There are gaps in the scope of application of AML/CFT requirements to VASPs. Notwithstanding this, the sector already has a relatively good understanding of risk and AML/CFT requirements.

Supervision (Chapter 6; IO.3; R.14, R.26–28, 34, 35)

26. The NBR and FSA apply effective “fit and proper” entry checks. More limited market entry controls are in place elsewhere, including for VASPs, which are less effective and present some vulnerabilities. There is no authority with a clear responsibility for proactively identifying unlicensed banking or payment services activity.

27. Overall, financial supervisors and the NOPCML demonstrate a fair understanding of ML/TF risks in the country and risks connected with sectors under their supervision, this understanding being strongest in the NBR. Overall, a more granular analysis is needed of inherent risk at sectoral and institutional levels. Whilst a significant quantity of information is available to financial supervisors (particularly the NBR), its use is not yet sufficiently systematic to support a comprehensive, comparable, and on-going understanding of risks. ML/TF risk understanding of DNFBP supervisors other than the NOPCML is more limited at sectoral level and self-regulatory bodies (SRBs) do not assess risk at individual institution level.

28. The most robust AML/CFT RBA is applied by the NBR, which supervises the most material FIs. It has recently significantly increased staff numbers and introduced organisational changes to remedy some previous bottlenecks. NBR engagement with supervised entities, mainly banks, is very frequent and the NBR uses a broad range of supervisory instruments. Whilst the NBR's approach is effective to some extent, it operates on a rather *ad hoc* basis, and appears to lack a general direction and high-level strategy in the AML/CFT field. ML/TF risks are taken into consideration to some extent by the FSA and the NOPCML (the latter relying significantly on sectoral risk understanding). AML/CFT supervision does not appear to be a priority area for the FSA. The activities of the NOPCML are seriously impacted by the low number of staff involved in

supervision compared to the number of supervised entities. The supervision of VASPs has only recently started.

29. Remedial measures are applied as a rule by the NBR, FSA and the NOPCML when breaches are identified, and they are duly followed-up. Supervisors of FIs have also applied, in practice, a broad range of sanctions, including against managers. However, sanctions have not been applied consistently and their effectiveness, in general, has not been demonstrated. This approach has changed in the FSA to a more systematic approach; though this change is too recent to assess its impact.

30. The diligent follow-up of remediation plans by supervisors has led to an increase in compliance in particular institutions. The NBR and the NOPCML have demonstrated a broad impact on compliance across the sectors that they supervise; the latter mainly through its awareness-raising activities. However, only the NBR has been measuring (to some extent) the impact of its activities and neither supervisor measures the success if what they do at a more strategic level.

31. Overall, a clear message of AML/CFT obligations and ML/TF risk is being promoted in Romania. Limitations in risk understanding affect the latter.

Transparency and beneficial ownership (Chapter 7; IO.5; R.24, 25)

32. The basic features of legal persons are set out in publicly available legislation.

33. Understanding of risk of abuse of legal persons is greater than that in the NRA report. However, the authorities do not clearly articulate what ML risks are presented by the many different types of legal persons created in Romania and, overall, the risk of use of legal persons for ML is higher than recognised by the authorities (medium level), at least to some extent. Important steps have been taken by Romania to prevent misuse of legal persons, including the development and use of public registries, which support a multi-pronged approach to collecting and accessing BO information. Implementation of this comprehensive framework is still work in progress, but the level of progress is substantial.

34. Applications to form most legal persons are, inter alia, supported by confirmations that founder shareholders (legal owners) and initial directors have not been convicted of specified offences. Confirmation is requested also for some subsequent changes. This approach is positive in preventing legal persons being formed to facilitate crime.

35. Greatest reliance is placed by competent authorities on: (i) a register of bank accounts held by the Fiscal Administration; and (ii) information held by banks, for accessing BO information on legal persons. Around 80% of legal persons created under Romanian legislation hold a bank account in Romania. Whilst most inspections of banks have findings in the application of CDD measures, the NBR believes that these are isolated cases. On the other hand, the supervisor has taken action to require some systemically important banks to remediate customer data. Accordingly, whilst there is evidence that banks hold accurate and current BO information, it is not complete. Public registers are used by competent authorities as a secondary source of information. Data provided at the time of the on-site visit shows that full BO information is held by the NTRO (the largest register) for 72% of legal persons.

36. Sanctions are not imposed in relation to late filings of basic and BO information in the registers. Companies have been dissolved for failing to convert bearer shares into registered shares.

International cooperation (Chapter 8; IO.2; R.36–40)

37. Romania has a sound legal framework for international cooperation. In general, the country is constructive in providing assistance and most foreign jurisdictions have generally commended Romania for providing international assistance.

38. Romania has no central case management system for handling and having oversight of mutual legal assistance (MLA) requests and no general guidelines for prioritisation of incoming requests. This hinders the efficiency of the analysis and follow up actions. A significant lack of qualitative data and statistics seriously limits the country's ability to demonstrate effectiveness comprehensively. A significant proportion of MLA requests sent by the authorities were linked to corruption and tax evasion, and cooperation was limited for other predicate offences. At the same time, the majority of incoming MLA requests were related to fraud and cyber-crime and executed by the POHCCJ and regional prosecutors' offices.

39. The NOPCML-FIU is generally active in financial intelligence unit (FIU)-to-FIU cooperation, however, there were significant delays relating to execution of incoming requests. Granular information about requests and explanation of trends has not been made available to the AT. The Police, the NBR and the FSA have mechanisms in place to provide and seek information informally in a timely and constructive manner. Large number of joint investigations teams have been formed on the initiative of the Romanian authorities, which demonstrates proactiveness in international cooperation. Most authorities are not collecting statistics on cooperation regarding basic and BO information.

Priority Actions

- a) Immediately start implementing mitigating actions that target the highest risks to which the country is exposed.
- b) Increase information technology resources, human resources, and training for the NOPCML and LEAs to facilitate better access to, and use of, financial intelligence.
- c) Increase the capacity of financial investigators to carry out parallel financial investigations and trace assets, and issue practical guidance to prosecutors to improve investigation and prosecution of ML and confiscation of assets.
- d) Ensure more sophisticated calibration of NBR supervisory actions with risk, secure greater recognition of importance of AML/CFT oversight by the FSA, and increase DNFBP supervisory capacity in higher risk areas, e.g., VASPs and legal professionals, to align with statutory responsibilities.
- e) To support improved transaction monitoring and reporting of suspicion by obliged entities, provide further guidance on sector specific risk factors and "red flags", e.g., regarding TF and typologies for prominent offences seen in Romania where not already available.
- f) Further develop existing controls to ensure the accuracy and currency of information held in BO registers and draw up a plan for reducing the number of legal persons that have still to file BO information.
- g) Develop an overarching national CFT strategy and action plan and provide further training to all relevant competent authorities to improve their understanding and effectiveness in: (i) TF

investigations and prosecutions; and (ii) detection of cross-border movements of cash for TF purposes.

h) Following completion of a TF risk assessment, implement a risk-based regulatory and oversight framework in the NPO sector.

i) Develop automated solutions that enable collection of comprehensive statistics to support multifunctional analysis at a national level.

Effectiveness & Technical Compliance Ratings

Effectiveness Ratings¹

| | | | | | |
|---------------------------------------|----------------------------------|---------------------------------------|--|---------------------------------------|-------------------------------|
| IO.1 – Risk, policy and coordination | IO.2 – International cooperation | IO.3 – Supervision | IO.4 – Preventive measures | IO.5 – Legal persons and arrangements | IO.6 – Financial intelligence |
| Moderate | Substantial | Moderate | Moderate | Moderate | Moderate |
| IO.7 – ML investigation & prosecution | IO.8 – Confiscation | IO.9 – TF investigation & prosecution | IO.10 – TF preventive measures & financial sanctions | IO.11 – PF financial sanctions | |
| Moderate | Moderate | Moderate | Moderate | Moderate | |

Technical Compliance Ratings²

| | | | | | |
|--|---|--|---|-------------------------------------|--|
| R.1 - assessing risk & applying risk-based approach | R.2 - national cooperation and coordination | R.3 - money laundering offence | R.4 - confiscation & provisional measures | R.5 - terrorist financing offence | R.6 - targeted financial sanctions – terrorism & terrorist financing |
| LC | PC | C | C | C | PC |
| R.7- targeted financial sanctions - proliferation | R.8 -non-profit organisations | R.9 - financial institution secrecy laws | R.10 - Customer due diligence | R.11 - Record keeping | R.12 - Politically exposed persons |
| PC | PC | PC | LC | LC | PC |
| R.13 - Correspondent banking | R.14 - Money or value transfer services | R.15 - New technologies | R.16 - Wire transfers | R.17 - Reliance on third parties | R.18 - Internal controls and foreign branches and subsidiaries |
| PC | PC | PC | LC | LC | LC |
| R.19 - Higher-risk countries | R.20 - Reporting of suspicious transactions | R.21 - Tipping-off and confidentiality | R.22 - DNFBPs: Customer due diligence | R.23 - DNFBPs: Other measures | R.24 - Transparency & BO of legal persons |
| LC | LC | LC | PC | LC | PC |
| R.25 - Transparency & BO of legal arrangements | R.26 - Regulation and supervision of financial institutions | R.27 - Powers of supervision | R.28 - Regulation and supervision of DNFBPs | R.29 - Financial intelligence units | R.30 - Responsibilities of law enforcement and investigative authorities |
| LC | LC | LC | PC | LC | C |
| R.31 - Powers of law enforcement and investigative authorities | R.32 - Cash couriers | R.33 - Statistics | R.34 - Guidance and feedback | R.35 - Sanctions | R.36 - International instruments |
| C | PC | PC | LC | PC | C |
| R.37 - Mutual legal assistance | R.38 - Mutual legal assistance: freezing and confiscation | R.39 - Extradition | R.40 - Other forms of international cooperation | | |
| LC | C | LC | LC | | |

¹ Effectiveness ratings can be either a High- HE, Substantial- SE, Moderate- ME, or Low – LE, level of effectiveness.

² Technical compliance ratings can be either a C – compliant, LC – largely compliant, PC – partially compliant or NC – non-compliant.

MUTUAL EVALUATION REPORT

Preface

1. This report summarises the anti-money laundering and combating financing of terrorism (AML/CFT) measures in place as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the AML/CFT system and recommends how the system could be strengthened.
2. This evaluation was based on the 2012 FATF Recommendations and was prepared using the 2013 Methodology. The evaluation was based on information provided by the country, and information obtained by the evaluation team during its on-site visit to the country from 21 September to 4 October 2022.
3. The evaluation was conducted by an assessment team (AT) consisting of (listed alphabetically): (i) Ms Sophia ASANIDZE, Head of Methodology and Off-site Supervision Division, National Bank of Georgia (financial evaluator); (ii) Mr Mark BENSON, Senior Prosecuting Officer, Economic Crime, Attorney General's Chambers, Isle of Man (legal evaluator); (iii) Mr Markko KARD, Strategic Analysis Department, Estonian Financial Intelligence Unit (law enforcement evaluator); (iv) Mr Aram KIRAKOSSIAN, Acting Head, International Relations Division, Financial Monitoring Center, Central Bank of Armenia (legal evaluator); (v) Ms Katerina PSCHEROVA, Head of AML/CFT Off-site Supervision Unit, Czech National Bank (financial evaluator); and (vi) Mr Richard WALKER, Director of Financial Crime Policy and International Regulatory Advisor, Policy Council, Guernsey (financial evaluator). The AT was supported by the MONEYVAL Secretariat (listed alphabetically): (i) Ms Kotryna FILIPAVICIUTE (Administrator); (ii) Mr Andrew LE BRUN, Deputy Executive Secretary; and (iii) Ms Veronika METS (Administrator). The report was reviewed by (listed alphabetically): (i) the FATF Secretariat; (ii) Mr Lajos KORONA, Public Prosecutor, Head of Division, Metropolitan Prosecutor's Office of Hungary; (iii) Mr Christopher VELLA, Senior Manager, Data Management & Analytics, Financial Intelligence Analysis Unit, Malta; and (iv) Mr. Rizumu YOKOSE, Deputy Director, Office for Countering Illicit Financial Flows, Ministry of Finance, Japan.
4. Romania previously underwent a mutual evaluation in 2013/2014, conducted according to the 2004 FATF Methodology. The 2014 evaluation report has been published and is available at <https://www.coe.int/en/web/moneyval/jurisdictions/romania>.
5. That mutual evaluation concluded that the country was compliant with seven Recommendations; largely compliant with 18; and partially compliant with 23. No Recommendations were rated non-compliant. One Recommendation was not applicable. Romania was rated compliant or largely compliant with eight of the 16 Core and Key Recommendations.
6. Following adoption of the 4th round MER, Romania was placed under the regular follow-up procedure. At the 56th Plenary in July 2018, Step 1 of MONEYVAL's compliance enhancing procedures (CEPs) were applied, which were eventually suspended at the 59th Plenary in December 2019. Romania was removed from the 4th round follow-up process and CEPs at the 61st Plenary in December 2021 when it was concluded that the country had remedied all deficiencies at a level equivalent to LC.

1. ML/TF RISKS AND CONTEXT

7. Romania is in south-eastern Central Europe. The country is situated on the eastern side of the Balkans, and is bordered by Bulgaria, Hungary, the Republic of Moldova, Serbia, Ukraine, and the Black Sea. With a total area of 238 397 km², it is the 12th largest country in Europe. Romania's borders amount to a total of 3 140 km (water and land frontier), of which 2 070 km represents the external border of the European Union (EU). Romania has a population of 19.3 million inhabitants (January 2020), of which Romanians account for 86.8 % and Hungarians 6.3 %. Its gross domestic product (GDP) is approximately EUR 219 billion. The largest contributors to GDP are industry, trade, and public administration.

8. Romania has 41 counties, plus the capital city of Bucharest which has a status like that of a county. Just over half of the population live in urban areas.

9. Romania is a semi-presidential republic where executive functions are exercised by the Government. The President of Romania nominates the Prime Minister and appoints the Government, which is subject to approval by the Parliament. The Parliament is the legislative body and consists of two chambers (Senate and Chamber of Deputies). The legal system in Romania is based on the civil law system. The justice system is independent of government and is made up of a hierarchical system of courts with the High Court of Cassation and Justice being the supreme court of Romania. There are also courts of appeal, county courts and local courts. The Romanian judicial system is based on civil law and is inquisitorial in nature³.

10. The country has been a member of the EU since January 2007 but is not part of the Schengen area. Inter alia, it is also a member of the UN (since 1955), Council of Europe (since 1993) and Organisation for Security and Cooperation in Europe (since 2003).

11. Romania's currency is the leu (plural is lei). Five lei is the equivalent of approximately one euro. The currency code for Romanian lei is RON.

1.1. ML/TF Risks and Scoping of Higher Risk Issues

1.1.1. Overview of ML/TF Risks

12. Based on the value of assets seized, the most prevalent **domestic** predicate offences detected in Romania are: (i) tax evasion; (ii) corruption; (iii) fraud, including cyber-crimes; (iv) smuggling; (v) human trafficking; and (vi) drug trafficking. In addition, a significant number of environmental crimes are reported each year. The authorities consider the ML threats presented by tax evasion, corruption, human trafficking, and cyber-crimes to be greatest. Organised criminal groups (OCGs) operate in Romania, manifesting themselves in most sectors of economic and social life, including tax evasion, cyber-crime, drug trafficking, and human trafficking.

13. Corruption represents a challenge at national and regional level. Low socio-economic conditions in Romania, compared to many other European countries, interpolated with other demographic and cultural risk factors, continue to contribute to continuous activity in the sphere of trafficking of Romanian citizens.

³ An inquisitorial system is a legal system in which the court, or a part of the court, is actively involved in investigating the facts of the case.

14. OCGs of Romanian origin operating abroad present the main **foreign** ML threat, with indications that criminal proceeds are transferred through the Romanian financial system and invested in Romania. Romania is also a transit space for trafficking of high-risk drugs, and a growing convergence of trafficking routes has allowed traffickers to connect the heroin production areas of Afghanistan, Pakistan, and Iran with the main points of entry into Europe for large quantities of cocaine from South America, and with export to the Middle East of synthetic drugs⁴. In the case of human trafficking, cyber-crime and drug trafficking, criminal activity is often committed abroad, and illicit funds transferred to Romania. Emigration has resulted in substantial numbers of Romanians living abroad and there is a significant Romanian diaspora transferring funds into the country.

15. The use of cash is the main method of money laundering (ML) at national level. Romania's economy is cash-based, and the size of the underground economy is around 30% of GDP⁵, which is significant. The use of shell companies has also been observed in ML activities, in particular laundering of illegal money from tax evasion. There is a high risk of ML in the real estate sector (construction and development), in which there is widespread use of cash to purchase materials and for the payment of labour.

16. Romania's financial sector remains dominated by banks, and non-bank sector remains underdeveloped. The customer base is predominantly domestic and there is an absence of complex products.

17. No home-grown terrorism has been identified to date, no terrorist organisations or cells are known to be active in the country, and there have been no terrorist attacks. The authorities are also confident that right wing extremists do not present a threat to national security. No national networks have been identified that obtain, collect, or transfer funds abroad for the benefit of terrorist organisations. Currently, jihadist (self-) radicalisation is the main risk to Romania's national security and is a constant concern from a security perspective. There have been examples of foreign residents transferring funds to conflict zones, but it has not been possible to link these to terrorism. The authorities have not identified links between OCGs, and persons connected to terrorism/terrorist organisations. Nor does information indicate that OCG activities are carried out for the benefit of terrorist entities/organisations.

1.1.2. Country's Risk Assessment & Scoping of Higher Risk Areas

18. In September 2022, Romania adopted its first national risk assessment (NRA) report, covering the period from 2018 to 2020. The assessment was completed using a methodology developed by the Council of Europe, which capitalises on FATF guidance and International Organisation for Standardisation standards (ISO 31000:2009 and ISO 31010:2009). Until the completion of the NRA process, the activities of competent authorities took account of the Supranational Assessment of ML/TF risk produced by the European Commission (EC). The NRA complements the adoption of many strategies with ML/FT elements already in place to address risks within Romania.

19. Preparation of the NRA has been led by a Management Committee composed of representatives from the National Office for the Prevention and Control of Money Laundering

⁴ UN Office on Drugs and Crime Global Report on Cocaine 2023.

⁵ NRA – chapter 1 (introductory considerations).

(NOPCML), the National Bank of Romania (NBR), the Financial Services Authority (FSA), the POHJCC, the Ministry of Justice (MoJ), the Ministry of Internal Affairs (MoIA), and the Romanian Intelligence Service (RIS). The same institutions were represented at expert level in the Project Technical Team which was responsible for collecting and analysing quantitative and qualitative data and for drafting of the NRA report. The NOPCML has coordinated the work of the Management Committee and Project Technical Team. In line with the methodology adopted, the Project Technical Team analysed threats, vulnerabilities presented by legal persons, vulnerabilities in non-financial sectors, and vulnerabilities in activities covered by the AML/CFT Law. The risk assessment was supported by technical assistance from the Council of Europe.

20. Data collected included: (i) past convictions and indictments for ML/TF offences; (ii) information on ongoing investigations and prosecutions (through questionnaires); and (iii) supervisory data. Reference was made also to external sources such as the EC's supra-national risk assessment and relevant FATF documents. The NRA notes that there were significant gaps in information available to support the assessment.

21. Several focus group discussions were organised in December 2021 to discuss the results of the first draft of the NRA. These group discussions included all the supervisory authorities (including the self-regulatory bodies (SRBs)), NOPCML, the POHJCC, MoJ, MoIA and the RIS as well as private sector representatives. Conclusions from these discussions were integrated into a second draft of the NRA.

22. In September 2022, an Inter-Institutional Council was officially established following a decision of the Prime Minister. This authority has the power to adopt the NRA and related mitigation policies and updates.

23. A wide range of threats is considered in the NRA report. Romania identified the following predicates as high risk: tax evasion, corruption, human trafficking (including child trafficking), and cyber-crime. Smuggling of cigarettes and drug trafficking are seen as presenting a medium risk. Cross-border risks are also considered in the NRA and cross-border financial flows are seen as a high risk. Sectorial risk distribution is the following: (i) high risk - gambling sector, real estate, trust and company service providers (TCSPs) and VASPs; (ii) medium-high risk - payment institutions (PIs) and (EMIs); (iii) medium risk - banks, securities⁶ and insurance sectors, exchange offices, NOPCML-supervised lenders, accountants, lawyers, and notaries; and (iii) low risk - private pension schemes administrators, giro postal service operators (money value transfer service (MVTs) - postal money orders) and NBR-supervised lenders. TF risk is assessed as low.

24. While the development of a national action plan was still ongoing at the time of the on-site visit, some high-risk areas have already been identified by the authorities as requiring further analysis. For instance, the authorities will undertake a dedicated sectoral risk assessment to analyse the use of virtual assets (VAs) and Virtual Asset Service Providers (VASPs), and a first workshop has already been held.

25. In addition to the NRA, several strategies are in place which are relevant for AML/CFT purposes. See R.2 in the TC Annex.

⁶ Investment intermediaries are assessed as presenting a medium-high risk.

26. In advance of the on-site visit, the AT identified several areas requiring increased focus in the evaluation through an analysis of information provided by the authorities and by consulting various open sources.

27. The AT examined the comprehensiveness of the NRA process and reasonableness of its conclusions in considering threats. For TF, amongst other elements, the AT focused on how Romania had assessed the risks arising from its geographic location, such as migration flows. Consistent with threats identified by the authorities, the AT also considered whether the measures in place to fight corruption and related ML were effective and discussed possible challenges in relation to investigating, prosecuting, convicting, and confiscating property in cases related to politically exposed persons (PEPs)/high level officials. A similar approach was followed for organised crime. The AT looked at the link between organised crime and corruption and the ML risks that derive from this. Linked to this, the AT also considered cross-border physical transportation of cash and bearer negotiable instruments, including use of cash couriers.

28. The AT also examined mechanisms to combat TF, including whether TF cases have been properly investigated and, where necessary, prosecuted, and capacity of border forces to respond to developing risks.

29. The AT considered co-operation and co-ordination between the financial intelligence unit in the National Office for the Prevention and Control of Money Laundering (NOPCML-FIU), law enforcement and prosecutorial authorities, focusing on how information sharing and co-ordination mechanisms allow for effective detection, investigation and prosecution of ML/TF and asset confiscation. It considered how recent changes in the structure of the NOPCML-FIU had addressed issues identified in previous evaluations, such as a significant backlog in the analysis of suspicious transaction reports (STRs) and dissemination of information to law enforcement agencies (LEAs), and insufficient resources and capacity.

30. The AT focused on measures applied by obliged entities conducting the most material and inherently higher risk activities to: (i) identify and verify beneficial ownership (BO) for complex ownership structures; (ii) identify and mitigate risks linked to customer relationships with PEPs; (iii) identify suspicious patterns linked to cash operations; and (iv) identify connections to OCGs. The AT also considered how those handling cash and conducting MVT services had mitigated the risk in doing so, and extent to which lawyers and accountants that provide services to trusts and companies understand the ML/TF risks. Sectoral reporting levels were also considered, particularly amongst those where they are low or non-existent.

31. The AT considered the independence of supervisors and how well supervisory activities were coordinated, including within designated non-financial businesses and professions (DNFBPs) where there are several SRBs. The AT also considered the extent to which SRBs are applying a risk-based approach (RBA), and extent to which this approach covers compliance with AML/CFT requirements and threats identified in the NRA. Given the use made of MVTS to transfer illicit proceeds, the AT considered the supervisory arrangements in Romania for European Economic Area (EEA) PIs that operate through EU passporting arrangements.

32. The AT also focused on the extent to which “shell” companies and nominees are used, and role played by lawyers and accountants in forming and administering legal persons. Following establishment of BO registers for legal persons and legal arrangements, the AT also considered the extent to which BO information held is up-to-date and accurate. Following the recent prohibition on bearer shares, the AT also considered the extent to which it became necessary to cancel such shares (failure to register).

33. Given the cross-border nature of ML/TF risk and number of domestic banks and branches that form part of international financial groups, the AT considered the extent to which international cooperation is being sought and provided by Romania.

34. The following areas were identified for decreased focus: insurance (except investment-linked insurance); EMIs; lending; and dealers in precious metals and stones.

1.2. Materiality

35. Most of Romania's GDP is generated by industrial activity (20%), retail and wholesale trade (18%) and the public sector (15%). Insurance and financial intermediaries account only for 2.5% of GDP. By way of comparison, real estate transactions account for 8% of GDP. No information is available on the size of the gambling sector (including online activities), but the entertainment sector overall accounts for less than 2.5% of GDP.

36. In 2019, Romania had an average monthly net salary of approximately EUR 660 and an unemployment rate of 3.9%. In this context, 4,632,000 persons were below the poverty threshold.

37. Romania's financial sector remains dominated by banks, a large share of which is foreign owned (mixture of global and regional groups), and the banking system holds around 80% of financial sector assets. Total assets of the banking sector are amongst the lowest in the EU in terms of share of nominal GDP – EUR 129.3 billion on 31 December 2021. In 2019, the ratio of bank assets to GDP was 58%. The customer base is predominantly domestic and there is an absence of complex products. The traditional non-bank financial sector remains underdeveloped. The capital market is undersized (70% of EU average) but now classified as an emerging secondary market. Total assets managed in the securities sector on 31 December 2021 were EUR 16.7 billion⁷. The Romanian insurance market has one of the lowest levels of insurance density and insurance penetration in Europe⁸. On 31 December 2021, assets managed by private pension managers were EUR 736 million.

38. At the time of the on-site visit, 26 VASPs had notified the NOPCML that they were active in the provision of exchange services between VAs and fiat currencies or digital wallets in Romania (the scope of regulation does not extend to all activities covered by the FATF Standard). Romania ranks in the top 10 countries in the world by number of reported crypto ATMs, reflecting to some extent the size of the country's population⁹. Romania's major cities are growing as top information technology (IT) hubs in Europe, with Romanian coders well respected in the fintech, blockchain and crypto space. These factors indicate a material level of VA activities in the country.

39. Around 1.2 million companies are registered in Romania, accounting for around 3% of those established in the EU¹⁰.

⁷ Split: investment firms – EUR 4.6 billion; fund managers – EUR 7.3 billion; and alternative investment funds – EUR 4.8 billion.

⁸ Life/investment linked insurance premia for life insurance companies and subsidiaries of life insurance companies totalled EUR 649 million in 2021.

⁹ <https://cryptohead.com/crypto-ready-index/>

¹⁰ [Industry Breakdown of Companies in Romania | HitHorizons.com](https://hithorizons.com/industry-breakdown-of-companies-in-romania/)

1.3. Structural elements

40. Romania has some of the key structural elements required for an effective AML/CFT system: (i) political stability; (ii) a high-level commitment to address ML/TF issues; (iii) stable institutions; (iv) governmental rule of law; and (v) a capable judicial system.

41. The country's high-level commitment to addressing ML/TF issues is demonstrated through the adoption of the National Defence Strategy (2020 to 2024), which identifies ML as a vulnerability to be mitigated. This is supported by other strategies – see R.2 in the TC Annex.

42. Romania ranks 41st (out of 139 countries) in the Rule of Law Index 2021¹¹ and 66th (out of 180 countries) in the Corruption Perceptions Index 2021¹². Romania ranks as follows under Worldwide Governance indicators¹³ (202): (i) voice and accountability – 65/100; (ii) political stability and absence of violence/terrorism – 63/10; (iii) government effectiveness – 43/100; (iv) regulatory quality – 64/100; (v) rule of law – 64/100; and (vi) control of corruption – 55/10.

43. The authorities have identified that corruption affects the efficiency and professionalism of public institutions and authorities and generates a low level of trust among citizens in the state's ability to manage social relations¹⁴. Further, a lack of professionals in public administration (due to excessive politicisation and interference in selection, evaluation, and promotion processes) has had a negative impact on institutional performance¹⁵.

44. Proposed reforms of the criminal justice system (Criminal Code (CC) and Criminal Procedure Code (CPC)) in 2017 to 2019 led to a large-scale wave of public protests and concerns expressed by numerous representatives and associations of the judiciary and prosecution, as well as by the international community, about the consequences for the independence of judges and prosecutors. In 2018, an opinion of the Venice Commission (part of the Council of Europe)¹⁶ highlighted that some of the proposed changes conflicted with the international obligations of the country. It was concerned that many amendments – if implemented - would seriously impair the effectiveness of the Romanian criminal justice system in the fight against various forms of crime, including corruption-related offences, violent crimes, and organised criminality.

45. GRECO (part of the Council of Europe) carried out an *ad hoc* evaluation in 2019 in which major issues were identified in the judicial system with: (i) the creation of a Section for the Investigation of Offences in the Judiciary (subsequently dismantled); (ii) the system of civil

¹¹ Rule of Law Index 2021, [WJP Rule of Law Index 2021 | World Justice Project](#). Covering 139 countries and jurisdictions, the Index relies on national surveys of more than 138,000 households and 4,200 legal practitioners and experts to measure how the rule of law is experienced and perceived worldwide.

¹² [Corruption Perceptions Index, Romania - Transparency.org](#)

¹³ The Worldwide Governance Indicators (WGI) project reports governance indicators for over 200 countries and territories over the period 1996–2020, for six dimensions of governance, [WGI 2021 Interactive > Home \(worldbank.org\)](#).

¹⁴ National Anti-Corruption Strategy 2021-2025.

¹⁵ National Defence Strategy 2020 to 2024.

¹⁶ Opinion on amendments to the CC and the CPC (2018), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2018\)021-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)021-e). See summary under Romanian sources note: <https://de.netdocuments.com/neWeb2/goid.aspx?id=2775-1843-9686>.

liability of judges and prosecutors; (iii) early retirement schemes; (iv) entry into the profession; and (v) the status and appointment of high-ranking prosecutors. This evaluation was followed up in 2021, where GRECO found that the authorities seemed determined to reverse or abandon many of the controversial judicial reforms. A follow-up GRECO compliance report (adopted in December 2022) notes: (i) an increased role for the Judicial Inspectorate in responding to risks for the integrity of judges and prosecutors; and (ii) introduction of new legislation with the objective of strengthening independence. At the same time, the OECD reported (2022) that political pressure on the National Anti-Corruption Directorate (NAD) had weakened its fight against corruption¹⁷.

46. The current government has a legislative programme to strengthen the independence, efficiency, and accountability of the judiciary, which took effect in November 2022 (after the end of the on-site visit)¹⁸.

1.4. Background and Other Contextual Factors

47. As a Member State of the EU, the country implements EU legislation, though there was a significant delay in transposition of the 4th AML Directive. As noted above, geographically, Romania sits at a transit space for trafficking of high-risk drugs, linking trafficking of heroin from Afghanistan, Pakistan, and Iran with entry into Europe of cocaine from South America and with exports of synthetic drugs to the Middle East. Romania has the longest land border of the EU and is located on a secondary route for illegal migration flows to Western Europe. It also sits on a secondary transit route (Balkan sub-route) into Europe from the Middle East, North Africa, and South-Central Asia.

48. Romania has an under-developed financial system, dominated by its banking sector, a large share of which is foreign owned (mixture of global and regional groups). The customer base is predominantly domestic and there is an absence of complex products. However, there is significant use of legal persons, and the country has one of the highest totals of companies in Europe¹⁹.

49. Corruption represents a challenge at national and regional level even if, on a strategic level, it is the criminal behaviour that is most often the subject of law enforcement in Romania. Many public sources (media and international and European institutions) indicate a problem with “grand corruption” (abuse of high-level power).

50. In 2016, Romania’s cash ratio (cash payments as a percentage of total payments) was second highest amongst EU Member States at 85%. The lowest ratio in a Member State was 13%. A relatively large number of people with bank accounts use their accounts only to receive their salary and withdraw cash. This is despite the introduction of strict limits on the use of cash and reporting of cash transactions to the NOPCML-FIU. There is a high percentage of people living below the poverty line (over 20% of the population) without education who can be exploited by

¹⁷ OECD's Economic Survey of Romania (2022), <https://www.oecd.org/economy/romania-economic-snapshot/>

¹⁸ This programme covers: (i) Law on the Status of Judges and Prosecutors (Law no. 303/2022); (ii) Law on Judicial Organisation (Law no. 304/2022); and (iii) Law on the Superior Council of Magistracy by the Senate on 17 October 2022 (Law no. 305/2022).

¹⁹ [Industry Breakdown of Companies in Romania | HitHorizons.com](https://www.hit-horizons.com/industry-breakdown-of-companies-in-romania/).

OCGs. The level of financial inclusion is low (currently 68%) – in part due to a thin (and declining) bank branch network in rural areas - but rising (10% in past ten years).

1.4.1. AML/CFT strategy

51. There is no national AML/CFT Strategy. Instead, several public policy documents have been adopted at national level to address economic crime and which highlight risks associated with ML/TF. See R.2 in the TC Annex.

1.4.2. Legal & institutional framework

52. An *Inter-Institutional Council* was established in September 2022 to approve the NRA report and related national action plan. The President of the Council is the President of the NOPCML. In addition to the NOPCML, the following authorities also sit on the Council: MoJ; the POHJCC, MoIA; the RIS; the NBR; and the FSA. Experts or representatives of other authorities may attend meetings of the Council, without taking part in the decision-making process. A technical secretariat is provided by the NOPCML.

53. At national level, the prevention and combating of terrorism is organised and carried out under the *National System for the Prevention and Combating of Terrorism*, in which 26 public authorities participate. The RIS provides the technical coordination of the system through the Counter-Terrorism Operational Coordination Centre.

54. There is an *Inter-Institutional Council dealing with the implementation of international sanctions* in which 12 public authorities participate. Depending on the nature of the sanctions, the Council may also request the participation of representatives of other public authorities or institutions at its meetings.

55. Coordination and cooperation on national level extends to financing of proliferation of weapons of mass destruction (PF) through the *Interagency Working Council for PF*.

56. The institutional framework involves a broad range of authorities.

Ministries:

57. The *Ministry of Finance (MoF)* authorises exchange offices.

58. The *Ministry of Foreign Affairs (MoFA)* coordinates the implementation of international sanctions at national level.

59. The *Ministry of Justice (MoJ)* develops public policies, strategies, and action plans in the fields of justice, prevention of, and fight against, corruption and serious crime. It also holds basic and BO information for associations and foundations and is the central authority in the field of international judicial cooperation.

Criminal justice and operational agencies:

60. The *National Office for the Prevention and Control of Money Laundering (NOPCML)* is the financial intelligence unit of Romania which receives, analyses and processes financial information. The NOPCML is also the national coordinating body for assessing the risk of ML/TF at national level and has responsibility for supervising compliance with the provisions of the AML/CFT legal framework by some non-bank FIs and DNFBPs. The NOPCML is subordinate to the MoF.

61. The *General Inspectorate of the Romanian Police (Police)* is the central unit for preventing and detecting crime through: (i) the Directorate for Combating Organised Crime; (ii) Criminal Investigation Directorate; (iii) Economic Crime Investigation Directorate; (iv) Special Operations Directorate; (v) Weapons, Explosives and Dangerous Substances Directorate; (vi) Public Order Directorate; (vii) Transport Police Directorate; and (viii) Institute for Crime Research and Prevention. The Police and territorial units under its subordination are part of the MoIA

62. The *Public Prosecutor's Office of the High Court of Cassation and Justice (POHJCC)* investigates ML cases through: (i) offices attached to the courts; (ii) the military prosecutor's offices; (iii) the *Directorate for Investigating Organised Crime and Terrorism (DIOCT)*; and (iv) the *National Anti-Corruption Directorate (NAD)* for large and medium corruption. The POHJCC through DIOCT is the competent authority to investigate TF offences.

63. The *Romanian Intelligence Service (RIS)* protects and promotes the interests of Romania and its allies, the security of citizens, economic security, and state secrets for the achievement of national security. It exists to prevent and combat espionage, terrorism (including TF) and cross-border organised crime that affect national security. It runs the Counter-Terrorism Operational Coordination Centre and is also the focal point for inter-institutional management of proliferation risk situations. At the same time, with a view to safeguarding national security, it conducts specific activities, alone or jointly with the Foreign Intelligence Service. The RIS is the competent authority and the recipient of NOPCML-FIU information when there are suspicions of TF.

64. The *National Agency for the Management of Seized Assets (NAMSA)* is responsible for tracing assets internationally and managing high value seized assets. It sits in the MoJ.

65. The *National Agency for Fiscal Administration (Fiscal Administration)* carries out fiscal controls, collections, and management and development of relations with taxpayers. It also holds basic and BO information for trusts and similar legal arrangements, holds a central register of bank and payment accounts, and implements international sanctions. It is accountable to the MoF.

66. The *Romanian Customs Authority (NCA)* is responsible for applying border controls, including over cash entering or leaving the EU. It is accountable to the MoF. Within the Authority there is: (i) the General Directorate of Customs; (ii) regional customs departments; and (iii) interior and border customs offices within the regional general directorates of public finance.

67. The *Romanian Border Police* supervises and controls crossing of the state border, preventing and combating illegal migration and specific acts of cross-border crime committed in its area of competence.

68. The *National Office of the Trade Register (NTRO)* holds a central register of basic and BO information for legal persons required to register in the commercial register. Basic information for such legal persons is also held in registers in the 41 counties of Romania and municipality of Bucharest.

Financial and non-financial supervisors:

69. The *National Bank of Romania (NBR)* is the central bank of Romania. It is an independent public institution which, inter alia, fulfils the role of financial supervisor for the Romanian banking sector and has exclusive responsibility for supervising compliance with the provisions of the AML/CFT legal framework by the following categories of FIs, which carry out activities and have a physical presence in Romania: (i) credit Institutions; (ii) PIs; (iii) EMIs; and (iv) lending non-bank FIs that are registered in the Special Register.

70. The *Financial Services Authority (FSA)* is an independent administrative authority which, inter alia, has exclusive responsibility for supervising compliance with the provisions of the AML/CFT legal framework by non-bank FIs operating in the capital/securities, insurance, and private pensions markets.

71. The *National Gambling Office (NGO)* shares responsibility with the NOPCML for supervising compliance with the provisions of the AML/CFT legal framework by casinos (terrestrial and online).

72. In addition to the NOPCML, several SRBs also have responsibility for supervising compliance with the provisions of the AML/CFT legal framework. These include: (i) Body of Expert and Licensed Accountants of Romania (BELAR); (ii) Chamber of Tax Advisors (CTA); (iii) National Union of Notaries Public of Romania (NUNPR); and (iv) National Association of the Romanian Bars (NARB). Cooperation agreements are in place between the NOPCML and SRBs.

73. Law no. 129 of 11 July 2019 for preventing and combating money laundering and terrorist financing (AML/CFT Law) is the main law that establishes the AML/CFT framework. The AML/CFT Law transposes Directives 849/2015 (4th AML Directive) and 2018/843 (5th AML Directive). Inter alia, the AML/CFT Law covers the definition of ML, application of preventive measures, reporting obligations, AML/CFT supervision, operation of BO registers for legal persons and legal arrangements, and analysis and processing of information and exchange of information by the NOPCML.

74. Other relevant laws include: (i) sectoral laws regulating the financial and DNFBP sectors; (ii) the CC and CPC; (iii) Law no. 535/2004 on Preventing and fighting Terrorism (the Law on Terrorism); (iv) Government Ordinance no. 9/2021 approved by Law no. 169/2022 on exchange of information with serious crimes; (v) Government Emergency Ordinance no. 202 of on the implementation of international sanctions; (vi) Regulation (EU) 2018/1672 on the control of cash entering or leaving the EU; (vii) Law no. 31/1990 on companies (Company Law), which regulates the association of individuals and legal entities, as well as the registration of new entities; and (viii) Government Ordinance no. 26/2000 on associations and foundations (Associations and Foundations Law).

1.4.3. Financial sector, DNFBPs and VASPs

Table 1.1: numbers of registered FIs

N/A – not available

N/Ap – not applicable

| Type of Entity | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 (June) |
|----------------|------------------------|-------------------------|-------------------------|-------------------------|-----------------------|-------------------------|
| Banks | 28 (+9 branches) | 27 (+ 9 branches) | 27 (+ 8 branches) | 26 (+ 9 branches) | 26 (+ 10 branches) | 25 (+ 10 branches) |
| PIs | 9 (+ 3 branches) | 8 (+ 3 branches) | 9 (+ 4 branches) | 8 (+ 4 branches) | 9 (+ 4 branches) | 10 (+ 4 branches) |
| EMIs | 3 | 2 (+ 1 branch) | 2 (+ 1 branch) | 2 (+ 3 branches) | 2 (+ 3 branches) | 2 (+ 3 branches) |

| | | | | | | |
|---|-----------------|-----------------|-----------------|-----------------|-------------------|-------------------|
| Agents of EEA PIs | N/A | N/A | 1 759 | 2 543 | 3 570 | 2 656 |
| Investment intermediaries | 24 (+ branches) | 21 (+ branches) | 20 (+ branches) | 19 (+ branches) | 18 (+ 7 branches) | 18 (+ 7 branches) |
| Asset/fund managers (SAI/AFIA) | 23 | 22 | 22 | 22 | 23 | 24 |
| Investment schemes - with Romania fund manager | 109 | 109 | 122 | 115 | 117 | 117 |
| Investment advisors | 27 | 26 | 24 | 4 | 8 | 10 |
| Depositories | 4 | 4 | 4 | 4 | 4 | 4 |
| Life insurance companies | 13 | 13 | 13 | 13 | 13 | 13 |
| Life insurance intermediaries ²⁰ | 207 | 193 | 181 | 178 | 176 | 175 |
| Pension scheme administrators | 8 | 8 | 8 | 8 | 9 | 9 |
| Exchange offices | 398 | 411 | 425 | 436 | 451 | 449 |
| Credit unions | 2 980 | 2 914 | 2 817 | 2 800 | 2 511 | 2 478 |
| Pawn shops | 3 141 | 3 217 | 3 287 | 3 350 | 3 407 | 3 486 |
| Other lending/leasing | 183 | 178 | 177 | 174 | 178 | 178 |
| Postal providers - payment services | N/A | N/A | N/A | N/A | N/A | N/A |

75. Romania's financial sector remains dominated by banks, a large share of which is foreign owned (mixture of global and regional groups), and the banking system holds around 80% of financial sector assets. In 2019, the ratio of bank assets to GDP was 58%, compared to non-bank FIs assets of 14%, capital markets assets of 4%, pension fund assets of 7%, and insurance assets of 2%. Activities outside Romania through branches and subsidiaries are very limited. Information on assets held in the larger financial sectors are included under Section 1.2.

76. Banks service both individuals and businesses and offer a full range of services, including deposits, current accounts, loans, transfers, and currency exchange. Natural persons account for over 93% of customer relationship. Resident customers account for over 90% of customer relationships²¹. 15 banks now offer the opportunity to open accounts and access products and services remotely. Retail and business banking make up most of the market, and there is minimal private banking activity.

²⁰ Includes all intermediaries providing life insurance and investment insurance policies. Excludes branches.

²¹ Resident natural persons account for 99% of accounts held for natural persons. Resident legal persons with only resident beneficial owners represent 92% of the total number of legal persons that are customers. Resident legal persons with only non-resident beneficial owners represent 0.27% of the total number of legal persons that are customers.

77. The MVTS market in Romania is dominated by one operator licensed by the NBR. However, there are also many agents of PIs that are licensed and supervised by regulators elsewhere within the EU that are not fully covered by the AML/CFT Law. On 30 June 2020, there were just over 2,500 such agents (third parties), 98% of which act on behalf of two global PIs.

78. Just one EMI is actively involved in issuing electronic money.

79. The traditional non-bank financial sector remains underdeveloped. Consumer loans and credit cards account for 99% of all loans granted by non-banks FIs. The capital market is undersized (70% of EU average), but now classified as an emerging secondary market. Around 90% of non-bank FIs customers are natural persons, and the number of non-resident customers is negligible. In the securities sector, most customers are non-corporate customers.

80. The Romanian insurance market has one of the lowest levels of insurance density and insurance penetration in Europe. Life assurance accounts for around 20% of premium income.

81. Whereas around 450 exchange offices are registered to carry out foreign exchange activities (including two hotels), they do so through around 2 700 linked foreign exchange bureaux. Use is not made of third party agents. There are no dominant players, with the five largest offices accounting for just under 20% of the market. Ownership is predominantly domestic (around 95%).

Table 1.2: numbers of registered DNFBPs and VASPs

N/A – not available

N/Ap – not applicable

| Type of Entity | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 (June) |
|----------------------------------|-----------|-----------|-----------|-----------|-----------|----------------|
| Casinos - terrestrial | 5 | 5 | 6 | 3 | 5 | 3 |
| Casinos - online | 26 | 27 | 27 | 28 | 29 | 31 |
| Real estate agents ²² | 6 358 | 6 469 | 6 650 | 6 944 | 6 911 | 7 274 |
| DPMS ²³ | N/A | N/A | N/A | N/A | N/A | 10 |
| Lawyers | 22 943 | 22 878 | 23 554 | 23 424 | 23 308 | 22 818 |
| Notaries | 2 360 | 2 422 | 2 478 | 2 479 | 2 509 | 2 550 |
| Tax consultants | 5 876 | 6 116 | 6 187 | 6 170 | 6 316 | 6 357 |
| Accountants | 46 205 | 47 445 | 47 232 | 47 599 | 47 558 | 47 485 |
| TCSPs | N/A | N/A | N/A | N/A | N/A | 761 |
| VASPs | N/Ap | N/Ap | N/Ap | N/Ap | 5 | 11 |

82. No information is available on the size of the DNFBP market. However, it is known that real estate activities account for 8% of GDP.

²² Those whose main business is real estate agency are reported.

²³ Includes only traders that accept payment in cash of EUR 10 000 or more.

83. The number of terrestrial casinos has fallen considerably in recent years, and only three land-based casinos are currently active. Residents and holidaymakers make up the customer base. In the case of online casinos, activities have grown considerably, and the customer base is exclusively Romanian residents.

84. Only FIs, lawyers and notaries may act as trustee to fiducia (a legal arrangement recognised under the Civil Code – see section 1.4.5). There is a large number of TCSPs.

85. The VASP sector is still nascent with a limited number of entities. At the time of the onsite visit, 26 had notified the NOPCML that they were conducting exchange service or wallet activities. The largest three regulated VASPs combined have around 100 000 customers (majority are resident) and annual transaction value of RON 1.8 billion (EUR 360 million). Information is not available on non-regulated VASP activities (i.e., those within the FATF Standard which are not regulated in Romania) but there is evidence that these are material.

86. Based on materiality, the banking sector is weighted as most important. Extensive use is made of this sector by Romanian diaspora, and it generates the highest number of STRs. Limits placed on the use of cash mean that most economic activity will involve a bank. PIs, including MVTs operators are also weighted as most important, given the country's ML risk assessment of this sector (medium-high), widespread use of cash (despite limits placed thereon), and high number of STRs.

87. The following sectors are weighted as highly important: (i) exchange offices - given the extensive use of cash in the country, number of cash transaction reports (CTRs) made and high threshold above which information on source of funds must be requested; (ii) notaries – as they account for the third highest number of STRs and must authenticate all real estate transactions (high risk area); (iii) lawyers, as they are extensively engaged in company formation (high risk area); (iv) accountants, as they are engaged in company formation (high risk area) and used for company tax compliance; (v) TCSPs (that are not lawyers or accountants) – as they present a high ML risk according to the NRA; and (vi) VASPs – since there is evidence that material VA activities are conducted in the country, legal requirements and supervision in the sector are new, the travel rule is not in place, and authorities consider ML risk to be high.

88. The following sectors are weighted as moderately important: (i) casinos – which are considered to present a high risk in the NRA; (ii) real estate agents – given that the real estate sector is assessed as presenting a high risk, balanced by the fact that most transactions do not involve agents; and (iii) the securities sector – which is not a material part of the financial sector.

89. The following sectors are weighted as less important: insurance (medium ML risk in the NRA), EMIs (one operator), lending (medium to low risk in NRA) and DPMS (limited activities).

1.4.4. Preventive measures

90. As mentioned above, the AML/CFT Act is the main statutory instrument through which preventative measures are applied in line with the FATF Recommendations (see TC Annex). They are supplemented by guidelines (including instructions) – see R.34.

91. The following activity – covered by the FATF definition of FI - is not subject to the AML/CFT Law: safekeeping and administration of cash. The following activities which are covered by the FATF definition of DNFBPs are not subject to the AML/CFT Law: (i) for lawyers, notaries and other legal professions, there is no reference to management of securities accounts; (ii) for accountants, there is no definition for “tax and financial matters” and so it is not possible

to confirm that all elements of the FATF definition are met; and (iii) for TCSPs, there is no reference to acting, or arranging for someone else to act, as secretary of a legal person. The gap in the scope of coverage of FIs and DNFBPs is not considered to be material. The following activities which are covered by the FATF definition of VASP are not subject to the AML/CFT Law: (i) exchange between one or more forms of VAs; (ii) transfers of VAs; (iii) safe-keeping and/or administration of VAs (except for provision of wallets) or instruments enabling control over VAs; or (iv) participation in, and provision of financial services related to, an issuer's offer and/or sale of a VA. This gap in scope is material.

92. AML/CFT requirements are not applied to business conducted remotely in Romania by EEA FIs, who are subject to equivalent AML/CFT requirements and supervised in their home countries (Member State in which the FI has its head office). In line with this approach, the NBR and FSA are responsible for the AML/CFT supervision of FIs that are Romanian legal persons where they provide services on a remote basis to customers in the EEA.

93. Restrictions are placed on the extent to which businesses may use cash (L.70/2015 on strengthening financial discipline on cash collections and payments). Daily limits of RON 5 000 (EUR 1 000) or RON 10 000 (EUR 2 000) (or foreign currency equivalent) are in place on the amount that may be: (i) paid in cash to the same person; and (ii) received in cash from the same person - subject to a daily overall limit of RON 10 000 on the total amount that may be accepted (apart from some shops). Restrictions do not apply to FIs or gambling operators. In addition, restrictions are placed on transfers of cash between natural persons that relate to: (i) the transfer of ownership of goods or rights (including real estate); (ii) the provision of services; and (iii) lending or repayment of loans. A daily ceiling of RON 50 000 (EUR 10 000) is placed on each transaction.

94. In addition, the following are subject to the AML/CFT Law: (i) gambling services that involve a monetary stake, including those with an element of skill, such as lotteries and betting; (ii) real estate agents when acting as facilitators in the rental of real estate, but only in respect of transactions for which the value of the monthly rent is equivalent in lei of EUR 10 000 or more; (iii) real estate developers; (iv) individuals who, as professionals, sell goods, insofar as they carry out cash transactions whose minimum limit represents the equivalent in lei of EUR 10 000; (v) activities linked to the purchase or sale of shares or elements of goodwill by lawyers and notaries public; (vi) operations or transactions involving a sum of money or a transfer of ownership carried out by lawyers and notaries public; (vii) financial, business and accounting consultants; (viii) bailiffs; (ix) property valuers; and (x) auditors.

1.4.5. Legal persons and arrangements

95. The main types of legal person that can be established in Romania are regulated by: (i) the Company Law (legal persons performing commercial activities); and (ii) Associations and Foundations Law (legal persons without patrimonial purpose).

96. Legal persons performing commercial activities (commercial companies) may have one of the following statutory forms: (i) limited liability company; (ii) joint-stock company; (iii) general partnership; (iv) simple limited partnership; or (v) limited partnership. An association is constituted based on an agreement by three or more persons to share their material contribution and knowledge for the realisation of activities in the general interest. A foundation is established based on a legal act, whereby assets are permanently and irrevocably held for the achievement of

a goal of general interest or, as the case may be, of some communities. Both associations and foundations must be established for non-profit purposes.

97. The total number of limited liability companies has gradually increased by over 200 000 since 2017. The authorities have not provided an explanation for the rise, e.g., whether it may be due to economic circumstances or specific action taken by the authorities.

Table 1.3: Numbers of legal persons registered Romania at end of 2021

| Legal form | Number |
|-----------------------------------|---------------|
| Limited liability company | 1 254 428 |
| Associations | 104 288 |
| Foundations | 20 628 |
| Joint stock companies | 10 466 |
| Agricultural cooperatives | 2 371 |
| General partnerships | 2 284 |
| Cooperative societies | 1 948 |
| Federations | 1 560 |
| National societies and companies | 1 046 |
| Unions | 796 |
| Autonomous administrations | 208 |
| Simple limited partnerships | 188 |
| Credit union organisations | 128 |
| Craft cooperatives | 58 |
| Economic interest groups | 43 |
| Consumer cooperatives | 34 |
| European economic interest groups | 15 |
| European societies | 6 |
| Limited partnerships | 3 |
| European cooperative societies | 3 |
| Consumer cooperatives | 1 |
| Cooperative organisations | 1 |

98. Romania does not meet the conditions of an international business centre and does not present elements of attractiveness for large international financial companies. The MoF has confirmed that no fiscal measures targeting foreign investment are included in its 2022 to 2025 fiscal strategy.

99. Nevertheless, according to a study published by the European Parliament on shell companies (2018), it is estimated that 30 000 of the approximately 420 000 incorporations of “foreign businesses” in commercial registers of EU Member States are in Romania, which places it behind only two other states.

100. All legal persons established in Romania must be registered. At the time of their registration, legal persons must provide BO information for registration in: (i) the central register of BO held at the NTRD; or (ii) central register for associations or foundations held at the MoJ.

101. “Fiducia” (a legal arrangement) are governed in Romania under Title IV of the Civil Code. A fiducia is a contract which includes a trustor, a trustee, and beneficiaries, connected by a common economic purpose. The trust fund that is created must be regarded as distinct from the trustee’s own funds and of any other funds managed by the trustee. The authorities have

confirmed that a fiducia meets the test set out in Article 2 of the Hague Convention on Trusts. There are 51 fiducia registered with the Fiscal Administration.

102. Romania is not an international centre for the creation or administration of legal arrangements/trusts and is not acting/used as a source-of-law country. However, limited information is available to the authorities in respect of activities of TCSPs. No foreign trusts are registered with the Fiscal Administration.

103. Legal arrangements must provide BO information to a central register organised by the Fiscal Administration. Fiducia contracts are also registered with the Fiscal Administration.

1.4.6. Supervisory arrangements

104. The NBR is responsible for the supervision of the following entities for compliance with the AML/CFT Law and targeted financial sanctions (TFS): (i) credit institutions that are Romanian legal persons (including where they provide services in another Member State without physical presence in that State); (ii) PIs that are Romanian legal persons (including where they provide services in another Member State without physical presence in that State); (iii) EMIs that are Romanian legal persons (including where they provide services in another Member State without physical presence in that State); (iv) non-bank FIs registered in the Special Register; and (v) non-bank FIs registered only in the General Register which are PIs or EMIs. The NBR is also responsible for the AML/CFT supervision of Romanian branches of foreign legal persons of the above types of FIs. Romanian institutions which operate in another EU Member State with a physical presence are supervised for AML/CFT purposes by the competent authority of the host Member State.

105. The NBR also supervises, on a RBA, whether the operations in Romania of agents and distributors of foreign PIs/EMIs are compliant with Romanian AML/CFT requirements. In case of major deficiencies that require urgent intervention, the NBR may take temporary measures. Otherwise, the NBR will inform the competent authority in the home Member State.

106. The FSA is responsible for the supervision of the following Romanian legal persons for compliance with the AML/CFT Law and underlying regulations: (i) investment intermediaries; (ii) asset/fund managers; (iii) investment schemes with a Romania fund manager; (iv) investment advisors; (v) depositories of financial instruments and private pension scheme assets; (vi) insurance and reinsurance companies; (vi) insurance intermediaries; and (vii) administrators of voluntary pension schemes and occupational pension schemes. The FSA is also responsible for the supervision of Romanian branches of foreign legal persons of the above types of FIs.

107. The NOPCML is responsible for the supervision of all other covered FIs for compliance with the AML/CFT Law that are not subject to supervision by the NBR or FSA. This includes lending (e.g., credit unions and pawn shops), financial leasing (there are no leasing companies, but leasing can be provided by NBFIs), exchange offices, and the post office (when providing payment services).

108. The NBR and NOPCML are responsible for supervision for compliance with Regulation (EU) 2015/847. In the case of the latter, this covers postal service providers which operate payment services.

109. Providers of casino services are subject to supervision with the AML/CFT Law and TFS by the NGO. The NOPCML may also undertake supervision of casinos in certain cases. Cooperation

modalities in terms of supervision are set out in a cooperation agreement between the NOPCML and the NGO under which the NGO will normally carry out supervisory work and will periodically transmit its supervisory plan and results of its supervisory work to the NOPCML.

110. The NOPCML is the designated competent authority for supervising compliance by all other covered DNFBPs with the AML/CFT Law and TFS. Self-regulatory bodies are also designated as supervisors - to the extent that they “represent and coordinate” covered DNFBPs. Cooperation modalities in terms of supervision are set out in cooperation agreements between the NOPCML and respective SRBs.

111. General powers are explained under R.26 and R.28. Resourcing is considered under IO.3.

112. The NBR acts as consolidated home supervisor for two banks that have very limited foreign operations.

113. Other than the bilateral cooperation agreements in place between the NOPCML and other DNFBP supervisors, there is no mechanism in place to support co-ordination of operational and strategic functions more generally amongst supervisors.

1.4.7. International cooperation

114. Romania has a sound legal framework in place for international co-operation. Two central authorities are responsible for handling mutual legal assistance (MLA) requests – the MoJ and the POHJCC. Under a direct cooperation regime, European Investigation Orders are handled directly by the NAD, the DIOCT or 235 prosecutors' offices attached to Appellate Courts, County Courts and District Courts.

115. The MoJ is the central authority for handling extradition requests. Confiscation requests relating to non-EU Member States are handled by the MoJ and confiscation requests based primarily on EU instruments by the POHJCC and regional prosecutors' offices.

116. There are no legal barriers for efficient financial intelligence unit (FIU)-to-FIU cooperation in Romania. Secure channels for information exchange are being used, such as the Egmont Secure Web and FIU.Net.

117. The Centre for International Police Cooperation in the Police is the central national authority in the field of international police cooperation. This unit is the central point of contact for Interpol, Europol and Sirene information exchange. This centre is also the contact point for Romanian liaison officers sent abroad (e.g., to Europol) and foreign liaison officers and internal affairs attachés accredited in Romania.

118. NAMSA is an operationally independent structure under the MoJ and is the contact point for an integrated approach to asset recovery - combining support for criminal prosecution bodies with attributes of international cooperation, management of seized assets and social reuse of confiscated assets.

119. Supervisory authorities, namely, the NBR and FSA cooperate with foreign counterparts through formal requests, and participation in supervisory colleges and other supervisory fora.

2. NATIONAL AML/CFT POLICIES AND COORDINATION

2.1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 1

- a) Significant work has been undertaken by the Romanian authorities to conclude the ML/FT NRA, which was formally adopted in September 2022. The NOPCML coordinated the NRA process. The NRA report contains a good overview of the ML risks faced by Romania, although analysis of TF is developed to a lesser degree. Generally, most authorities demonstrate a fair understanding of the main ML/TF risks, although the depth of risk understanding varies.
- b) Some concerns can be raised in relation to the depth, reasonableness, and implications of some risks (such as drug trafficking, human trafficking, environmental crime, NPOs, legal persons, unlicensed MVTs services, VASPs) and sectorial risk levels. Lack of comprehensive quantitative data and statistics that support NRA analysis and conclusions limits the depth of understanding of risks.
- c) An Interinstitutional Council (IC), which is responsible for risk mitigation at the national level was formed recently (September 2022). Although the establishment of the IC is a positive development, not all authorities that were taking part in the NRA process are represented on it and it is not clear how coordination and cooperation will be carried out in practice.
- d) A large number of strategies concerning specific risks (corruption, PF, immigration, drug trafficking, human trafficking, etc.) that generally mirror the risk environment in the country were drawn up prior to commencing the NRA. However, there is no overarching strategy which makes it difficult to ensure a uniform approach across all areas of AML/CFT. Linked to this, information on the level of risk mitigation achieved is not comprehensive. However, the authorities have been working on developing targeted counter measures the effect of which is yet to be seen.
- e) The action plan aimed at mitigating the risks identified in the NRA report was formalised after the on-site visit. Although the authorities were working on mitigation prior to and in the process of commencing the NRA, the extent to which their actions have proven mitigating effect cannot be fully determined due to the recent nature of these efforts. It was demonstrated that the national risks are integrated into the objectives and activities of the individual competent authorities to some extent.
- f) Romania does not apply any statutory exemptions from the FATF Recommendations that apply to covered FIs and DNFBPs. Higher risk scenarios that trigger enhanced customer due diligence (CDD) measures and lower risk factors that trigger simplified CDD are consistent with the general risk environment in Romania.
- g) While there was interagency coordination for the purposes of the NRA, formal routine co-ordination of the development of policy responses at the strategic level, including on operational activities, is work in progress; coordination and cooperation concentrates on STR analysis and reporting, supervision related matters to some extent, awareness raising and

intelligence sharing between supervisors, prosecutorial authorities and the NOPCML-FIU. National coordination and cooperation extend to PF.

h) The authorities started the dissemination of the results of the NRA to FIs, DNFBPs and VASPs one month after the on-site visit through various awareness raising initiatives and publication on the NOPCML website. This delay is attributed to recent adoption of the NRA report.

Recommended Actions

Immediate Outcome 1

a) Romania should deepen its understanding of ML risks in some areas (such as drug trafficking, human trafficking, environmental crime, NPOs, legal persons, unlicensed MVTS services, VASPs) and enhance its understanding of TF risk so as to ensure that a comprehensive understanding of risks is translated into the action plan to mitigate the risks.

b) Romania should draw up a consolidated (overarching) AML/CFT strategy document that would ensure a uniform approach across all areas of AML/CFT. Under this strategy, authorities should draw up the action plan aimed at mitigating the risks. As part of this process, the objectives and actions of each of the competent authorities involved in mitigation should be clearly defined, along with timelines and mitigating actions that are prioritised depending on the level of risk exposure.

c) Romania should ensure that its domestic cooperation and coordination mechanism aimed at mitigating national risks is effective, and that the NOPCML has appropriate authority to coordinate policy and operational activity within this mechanism. All relevant competent authorities should be represented in IC work, and centralised oversight of the process should be ensured (including monitoring of implementation of the actions). As planned, the NOPCML should recruit additional staff for the purposes of its risk assessment and coordination activities.

d) Authorities should develop an automated system, and establish the necessary processes, to collect and analyse statistical data on an ongoing basis. As part of this, Romania should consider establishing a central point at the national level that is responsible for consolidating statistics for analytical purposes and employing adequate IT automation solutions for data gathering and multifunctional use.

120. The relevant Immediate Outcome (IO) considered and assessed in this chapter is IO.1. The Recommendations relevant for the assessment of effectiveness under this section are R.1, 2, 33 and 34, and elements of R.15.

2.2. Immediate Outcome 1 (Risk, Policy and Coordination)

121. Romania's financial sector is dominated by its banking sector, a large share of which is foreign owned. The customer base is predominantly domestic; financial products and services are not complex. Romania has a substantial number of companies; operation of shell companies is not uncommon. The size of the shadow economy amounts to approximately 30% of GDP and cash use is prevalent.

122. The highest criminality rates are linked to domestic corruption and organised crime which is of a transnational nature. Romania is a transit country for drug trafficking and trafficking in human beings.

2.2.1. Country's understanding of its ML/TF risks

Overview

123. Significant work was undertaken by the authorities during their first NRA, the report for which was adopted in September 2022²⁴.

124. The NRA report covers both ML and FT and involved a range of authorities coordinating their work in several interlinked fora (a steering group, a technical committee, and a working group). However, this was not the first risk assessment as the NBR had prepared a sectoral risk assessment (SRA) prior to commencing the NRA. The NOPCML has also issued strategic analysis and typologies and plans to undertake SRAs for the sectors under its supervision. Several guidance documents, informed by awareness of risks, have been drawn up (see R.34 for more information).

125. The NOPCML coordinated the NRA process. Its supervisory staff have been responsible for supervision, risk assessment and coordination of the NRA. The NOPCML recognises that it needs additional resource for its coordination responsibilities, as well as to administer the IC, and it plans to recruit additional staff for the supervisory area²⁵; it is proposed to use this additional capacity to establish a separate risk unit next year within the supervisory division. This will benefit future NRAs.

126. The authorities see the NRA as an articulation of risks which they were already aware of from their experience; new risks were not identified. The NRA report contains a good overview of the ML risks faced by Romania, although analysis of TF-related threats and vulnerabilities is developed to a lesser degree. The AT considers that a deepening of the assessment process, including more stakeholders across more authorities, will lead to a deeper assessment and understanding, and a more rounded articulation of the risks and conclusions. Generally, most authorities demonstrate a fair understanding of the main ML/TF risks, although the depth of risk understanding among the authorities varies. In some areas, such as organised crime and corruption, understanding is demonstrably greater than the NRA report suggests. Establishment of two specialised prosecutor units, namely DNA and DIOCT, that are tasked with the investigations and prosecutions of organised crime and corruption, shows that these important risks are understood and acknowledged within the country.

127. Statistical data from the period 2018-2020 was used for the analysis (e.g., predicate offences, ML convictions) along with statistics made available by the supervisory authorities on sectorial risks, qualitative data and case studies.

²⁴ The NRA was carried out through a project SRSP 2020/137.01 funded by the EC under the Structural Reforms Support Program 2017-2020, implemented with the support of the Council of Europe, and was approved by the EC in February 2020 and launched in July 2020.

²⁵ An additional 30 members of staff are planned to be recruited in 2023; the plan was approved by the Government on October 18, 2022.

128. Shortcomings in the NRA relating to the lack of comprehensiveness of data used are noted in that report. The authorities advised that these statistical shortcomings do not affect the overall findings of the NRA, as they used statistics as a starting point, with other factors also being considered. Nevertheless, the AT noted the partial availability of data during the evaluation and has concluded that incomplete data and analysis ultimately has a chilling effect on the ability to achieve comprehensive understanding of Romania's risks. Linked with this, the AT noted that the statistical reporting of prosecutions and convictions in the NRA report would benefit from consistency of approach and that further use can be made of CTR information.

129. In terms of overall approach, judgment has been used by the authorities to evaluate risks rather than specific numerical weightings. Particular weight is given to the number and type of convictions in light of the certainty they provide. To a lesser degree, weight was also attached, in decreasing order of importance, to indictments, pending cases, investigations, STRs and information relating to and from obliged entities. Regarding supervision, the important factor was the level of compliance by obliged entities. The authorities also indicated that other factors were taken into account, including external reports on Romania. The AT has a concern that the weighting attached to convictions, and the criminal justice system more generally, has been too high, even though there are areas where the authorities have gone beyond convictions in their approach.

130. Significant lack of resources is common across a significant number of the competent authorities. This includes shortage of staff, lack of financial/budgetary resources and technical (necessary IT tools, automation) equipment, as well as specialised knowledge or expertise. This vulnerability is highlighted in the NRA report as concerning FIU functions, supervision (especially regarding DNFBPs), and financial investigators and judicial police officers tasked with parallel investigations of complex cases (including foreign predicate offences that involve complex corporate structures) and collecting evidence. It is positive that work on addressing these issues has begun, e.g., the NOPCML was granted additional budgetary resources which allowed reallocation to better equipped premises and is in the process of hiring additional staff that will be tasked with the supervision function, including over DNFBPs. Authorities, including law enforcement, take part in the training workshops/conferences aimed at increasing their expertise.

Money Laundering

131. A wide range of threats is considered in the NRA report. Romania identified the following predicates as high risk: tax evasion, corruption, human trafficking (including child trafficking), and cybercrime. Smuggling of cigarettes and drug trafficking are seen as presenting medium risk. Cross-border risks attached to financial flows are seen as high risk. Sectorial risk distribution is the following: (i) high risk - gambling sector, real estate, TCSPs and VASPs; (ii) medium-high risk - PIs and EMIs; (iii) medium risk - banks, securities and insurance sectors, exchange offices, NOPCML-supervised lenders, accountants, lawyers, and notaries; and (iii) low risk -- private pension schemes administrators, giro postal service operators (MVTs - postal money orders) and NBR-supervised lenders.

132. The AT has a concern as to the reasonableness and implications of the risk ratings of a few threats and business sectors. Nevertheless, the AT also notes that the authorities were able to provide explanations for the conclusions they have reached.

133. The residual high-risk level of human trafficking in the NRA report was based on four convictions. This small number is an example where Romania moved away from simply regarding

convictions as the key criterion for concluding the risk level. Human trafficking continues to be regarded as high risk in light of Romania's position as a transit country and as a source country for trafficking, the typologies of cases, the value of proceeds generated and a higher number of indictments. Even so, the authorities recognise that investigatory and other issues mean that the number of cases is not high. The immigration strategy notes that a lack of controls could determine the development of the phenomenon of human trafficking; and also admits existence of cases of illegal entry to Romania on the basis of false travel documents. This is a positive approach by Romania.

134. The residual risk of drug trafficking is medium. The number of cases is high but only a few are considered to be complex cases; most cases are small with low values involved (relating to possession of drugs). The authorities continue to consider that the risk level is medium; this is informed by the criminality partly taking place in Romanian territory and largely in other jurisdictions, meaning that the proceeds of crime are generated abroad. A focus on relatively minor drug trafficking cases is explained by the authorities as being the result of a low standard of living that affects drug traffickers' capacity to purchase large quantities of drugs from abroad, thus emphasising the relative importance of the cases on which they focus. However: (i) the issues identified in IO.7 in which it is explained that the criminal justice system needs more resources and training so to address both drug trafficking and laundering of proceeds of trafficking robustly (and thereby suggesting that there should be more cases); and (ii) the likely level of drug use in Romania's relatively large population suggest that the risk of ML from drug trafficking expressed in the NRA and in the current understanding by authorities is too low²⁶.

135. Environmental crime (illegal logging, waste management) has the seventh highest number of indictments for ML and is rated as having a low residual risk for ML in the NRA report. The authorities consider that statistics do not indicate a high risk – this is because there were not enough cases which justified a medium/high risk rating at the time of the assessment. The AT notes that the NRA report says that there was a perception that some environmental crimes were not detected and that there were problems with financial investigation and elsewhere in the criminal justice system. The authorities advised the AT that the complexity of cases and information in the media during the last few years have raised the profile and risk of this crime. There is an increasing trend of indictments and there still remains a perception some crimes have not been detected. Understanding has increased since the NRA that the risk of environmental crime is high. The AT agrees with this view.

136. Cybercrime is rated in the NRA report as having a high residual risk. There were no convictions at the time of the assessment but there was a large number of indictments and significant values were involved. It is possible that there might have been under-reporting of cyber-crime as it is often reported as and seen as synonymous with fraud. There is now an increasing trend of cyber criminality. The AT agrees it is high risk

137. OCGs are engaged in a range of criminal activities in Romania, focused mainly on trafficking of drugs, human trafficking and sexual exploitation, crimes against property, organised VAT, EU funds fraud and cybercrime. The authorities have a good level of understanding how OCGs operate. The authorities also demonstrated a good understanding of the fact that "*ML professionals*" operate in Romania both within OCGs and autonomously.

²⁶ This is also supported by the findings of the UN report published after the on-site visit which is referred to in Chapter 1 "UN Office on Drugs and Crime Global Report on Cocaine 2023".

138. The banking sector is rated as medium risk for ML²⁷. This is on the basis that the banking system is mature, assesses its risks, mitigates the risks with good quality controls and the sector is small compared with that in other countries. While the AT accepts the latter point in a country-by-country context, in the context of Romania the AT considers that a rating of medium risk is not consistent with the size and materiality of the sector, the cross-border links of the sector, the number of STRs from banks, the number of indictments and convictions of individuals with bank accounts, typologies and views expressed by various authorities that the proceeds of corruption and tax evasion are laundered through the banking system.

139. EMIs are rated as medium high risk (i.e., higher risk than banks) although the sector is very small and transaction amounts and values are not high. This is based on the recent introduction of a regulatory framework, products in the sector being new, typologies for the recognition of suspicion being difficult to determine and the conclusion that controls are weak. Exchange offices are rated as medium risk, notwithstanding the relatively small size of this sector, on the basis that there is intensive use of cash and weak application of CDD measures. The AT considers that there would be merit in Romania looking again at the risk levels of these two sectors.

140. Whilst it has been stated that lawyers are engaged in the formation of legal persons and provide director services thereafter, the authorities have otherwise not been certain about the extent of CSP activity in the country. Initial estimates of around 13 000 CSPs were based on legal entity activity codes covering, amongst others, holding companies (management of group shares) and renting and sub-letting of own or leased real estate. According to the authorities' latest estimation (based on notifications received from CSPs), there are 761 CSPs. The absence of a market entry regime for those entities that conduct CSP activities suggests that there is not a comprehensive understanding of activities in the sector. The risk of CSPs is categorised as high in the NRA even though legal persons and lawyers are each considered to have medium risk.

141. VASPs have been required to notify the NOPCML of their existence since July 2022 (26 having done so at the time of the on-site visit). The risks have not yet been assessed - the NOPCML has commenced preparation of an SRA on VASPs. Understanding of the risks of VASPs is at an early stage, although there appears to be a general understanding and publicly available information suggests prevalent use of crypto currency ATM machines which was acknowledged in the NRA report as a high-risk service.

142. Use of cash is common due to a combination of a lack of development of the banking sector, i.e., its limited presence outside cities, the absence of ATMs in many parts of the country, and a substantial low-density and rural population which have little appetite to use the banking system. In addition, the authorities advised that cash is used by criminals to purchase real estate (the main reason for treating real estate sector as a high risk in the NRA report). Banks pay particular attention to use of cash and it is expected by the authorities that the legislation imposing limits on the use of cash (introduced in 2015) helps to mitigate cash-related risks. The risks of use of cash are reasonably understood. The authorities would benefit from deepening their understanding of risks linked to cash transportation through borders (see IO.8 for more information).

143. Linked with the significant use of cash, financial inclusion is low. This suggests a large shadow economy which, according to the authorities' estimation, amounts to 30% of GDP. The NRA report notes that cash is used as the main method by OCGs to hide the illicit origin of money

²⁷ Residual risk

in Romania; this is evidenced by the cases analysed in the report. On the other hand, there are many economic sectors in Romania that commonly conduct cash transactions, such as agriculture, waste industry, exchange offices, and gambling.

144. There are six free trade zones (FTZs) in Romania²⁸; these offer freedom from customs tariffs. FTZs are not seen as being attractive to OCGs by the authorities as criminal activities are not prevalent. For example, only a limited amount of criminal cases have been detected by the authorities, as follows: (i) smuggling cases (cigarette, drug smuggling) and submission of false documents to the customs authority involving the FTZ at Constanza; (ii) one case relating to violation of international sanctions in Giurgiu FTZ was examined (transportation of goods from US to UAE, Romania being a transit country); and (iii) in the remaining free zones, suspicious cases identified include use of forged vehicle documents, isolated thefts committed by individuals, and smuggling of small quantities of cigarettes and oil.

145. The authorities also take comfort from regulation by the MIA and other controls. These include, for example, in the Constanza FTZ, monitoring of placement and storage of goods, requirement to obtain prior consent to build the premises for storage, etc. Only ship crews and port officials can visit two of the FTZs. The authorities do not consider that the FTZs present a significant risk and the AT saw no information which is inconsistent with this view.

146. Legal persons are considered to present a medium residual risk on the basis that such persons have bank accounts in the country. It is estimated that 80% of legal persons established in Romania hold a bank account in the country. The key risk for ML is seen as being limited liability companies with one shareholder which are, in practice, shell companies. They are used most significantly for tax evasion (VAT fraud) to present illicit transactions as lawful and not to as significant an extent for other crimes. Legal persons are thought to facilitate about half of the country's ML, with OCGs using them in relation to corruption. The authorities consider that legal persons outside Romania are not used to any great extent by criminals within Romania (destination jurisdictions being varied such as countries in western Europe and countries in the eastern Mediterranean), rather the picture of cross-border activity is that criminals outside Romania are using legal persons incorporated in the country.

147. With regard to cross-border risks more generally, the Romanian authorities have seen a tangible pattern of flows of proceeds of crime to other jurisdictions, including to other EU Member States, the Far East and tax havens. Criminals often use multiple "transit" bank accounts to channel illegal funds, i.e., funds received and paid out within a short period of time. Analysis of these flows adds to a greater understanding of the cross-border risks. However, comprehensive statistics on international cooperation are not available thus the extent to which the scope, frequency and geographical dimension of international cooperation is in line with Romania's risk profile cannot be fully determined (for more information see IO.2). The authorities would benefit from deepening their risk understanding on cross-border risks and/or geography-related considerations attached to the individual risks: geographies of legal and BO of business relationships and companies; geographies linked to most prevalent predicate offences, linked to this, international cooperation related matters; geographical element of inherent risk exposure of obliged entities, etc.

Financing of Terrorism

²⁸ Constanza, Braila, Galati, Sulina, Giurgiu and Curtici – Arad.

148. TF risk is considered as low. This judgement is mainly supported by absence of terrorist attack and perceived general ability by the competent authorities to identify TF.

149. There have been no terrorist atrocities in Romania to date. The authorities are not aware of any networks within Romania engaging in FT; they are aware that there has been some nationally accessible propaganda issued from other countries via the internet. There is no intelligence which suggests raising of funds in, or money transiting, Romania for use elsewhere. There has been one FT conviction (see IO.9). The authorities have no intelligence of Romanian OCG involvement in FT. There is no intelligence or information from other jurisdictions which suggests networks operating in Romania.

150. In the view of the AT, the impact of TF vulnerabilities to the risk assessment is to some degree underweighted; also, authorities would benefit from a more comprehensive analysis of some elements linked to TF risk. For example, there is limited analysis on how Romania's geography may influence TF risk.

151. For the purpose of the NRA, the authorities collected data on incoming and outgoing wire transfers (for the period of 2020) conducted through banks and MVTS operators. Data on cross-border transfers shows that the MVTS sector is more frequently used for money transfers to/from jurisdictions that are considered increased risk for terrorism or TF than the banking sector, suggesting that the risk of the sector might be higher risk than assessed by the authorities; especially in light of the fact that the MVTS sector has less robust (though still good) controls in place when compared to the banking sector. In general, TF risk understanding by obliged entities is developed to a lesser degree than that of ML and, linked to this, the scope for better articulation by the authorities of cases that might constitute TF suspicion, could lead to underreporting of TF-related STRs.

152. The authorities advised that some informal money remittance (hawala) operations exist (notwithstanding their illegality). They explained that hawala is mainly used by students who wish to avoid high bank fees; destinations for funds include countries in the Middle East region, such as Syria; transactions are small (e.g., hundreds of euro). The RIS has analysed hawala operations and concluded that there is no sign of them being used for TF, although some have links to drug trafficking and human trafficking as a result of Romania's geographical position as a transit country. The RIS spoke well about its understanding of risks.

153. LEAs were mindful of the possibility, even if theoretical, that hawala networks might be used by OCGs to channel illegal funds but, even so, the criminality is seen as occurring elsewhere, Romania being regarded as a transit country.

154. NPOs ceased to be obliged entities from mid-2019, which also removed NPOs from the NOPCML's supervisory framework. While this framework was based on ML rather than FT, it included on-site inspections throughout Romania and provided knowledge of NPOs. The risk understanding for the purposes of the NRA was achieved from the supervisory experience of the NOPCML prior to mid-2018, STRs received by the NOPCML and the experience of the RIS. The NOPCML has seen no use of NPOs for terrorism or FT. The RIS²⁹ advised the AT that it has analysed the activities of NPOs that have come to its attention due to suspicion of FT, and that, on the basis of this analysis, it has not identified any NPO involved in TF.

²⁹ However, information relating to NPOs that appeared under RIS radar is classified and therefore was not made available to the AT.

155. There have been no foreign enquiries about potential Romanian NPO involvement in terrorism or TF. It is this experience which led to the short section on NPOs in the NRA. The experience of the NOPCML and the RIS is positive in contributing to understanding of TF risk in relation to NPOs, although comprehensive assessment of risk (including financial transactions undertaken by NPOs) and identification of NPOs vulnerable to FT is needed to build on the existing foundations. It is anticipated that the NRA action plan will remedy what is considered to be a gap in the routine ability of the authorities to obtain information from NPOs on financial transactions and financial flows.

156. The NRA states that a significant number of immigrants were prevented from entering Romania, with these migrants originating from Syria and elsewhere. This view is supported by an immigration strategy which acknowledges the existence of a threat that persons having links with terrorist organisations might be concealed in the migration flow³⁰.

Covid -19 and recent developments

157. The authorities well understood the change in risks during the pandemic. Inevitably, businesses carried out customer services online. E-commerce increased significantly. STRs relating to fraud increased by some 15%, particularly with regard to procurement involving medical/pharmaceutical cases. Corruption played a part in these cases and other cases such as trade in forged vaccination certificates. These cases and others demonstrate an increase in cybercrime risk, with an increase in STRs directly and indirectly reflecting increased cyber criminality. Overall, the change in risk profile reflects the opportunity for increased opacity and anonymity when significant business activity moved to online mechanisms on a country-wide basis rapidly. There was no decrease in other predicate criminality.

158. Other changes to risk have taken place which are not linked to the pandemic, in particular, as mentioned above, the authorities have detected an increase in environmental crime and the consequential ML.

159. More generally, the authorities have noted that criminals have become more sophisticated in recent years. Proceeds are not held long in bank accounts, the intention increasingly being to move proceeds quickly for investment in assets such as real estate in Romania and elsewhere, and for criminals to look for intermediaries to facilitate this. Changes to risk environment due to Covid-19 are addressed in the same way as broader ML/TF risks; see the analysis on risk mitigation below.

2.2.2. National policies to address identified ML/TF risks

160. The IC was formed in September 2022 to agree the NRA and coordinate the development of an action plan to address the NRA findings. The IC has met twice, with one of the meetings agreeing the NRA. The main authorities which were directly involved with the NRA are represented on the IC, namely: representatives of the NOPCML, MoJ, the POHJCC, MoIA, RIS, FSA and NBR. Not all authorities that are required by the AML/CFT Law to play a role in assessing the national risks and mitigation are represented in the IC (see R.2 for more information), such as the Fiscal Administration, NCA and Border Police, and NGO.

161. At the time of the on-site visit, the action plan aimed at mitigating the risks identified in the NRA report was work in progress. It was formally approved in February 2023 – 4 months after

³⁰There were cases of illegal immigration by using forged documents noted.

the on-site visit. Whilst the action plan should add greater comprehensiveness and joined up approaches to the mitigation measures undertaken to date, in light of the recent establishment of the IC, the AT considers that there would be merit in articulation of how the coordination mechanism for national AML/CFT policies covering all authorities will function in practice.

162. A large number of strategies had been drawn up prior to commencing the NRA: (i) Operational Strategy of the NOPCML; (ii) National Cyber Security Strategy; (iii) National Drug Strategy; (iv) National Strategy against Organised Crime; (v) National Strategy against Human Trafficking; (vi) National Defence Strategy; (vii) National Strategy on Immigration; (viii) National Anti-Corruption Strategies; (ix) National Asset Recovery Strategy; (x) National Strategy for Sustainable Development of Romania³¹; (xi) National Strategy for Preventing and Countering the Proliferation of Weapons of Mass Destruction; and (xii) National Strategy for Preventing and Countering Terrorism; (see c.2.1 for more information) with a number of different stakeholders involved. The existence of these strategies indicates national efforts to address important risks prior to the formal adoption of the NRA.

163. In general, the strategies mirror the picture of risks in Romania to a large extent, e.g., corruption, cyber-crimes, human trafficking, drug trafficking, and are useful strategical/policy documents. Even so, in the absence of an overarching national AML/CFT strategy, it is difficult to ensure a uniform approach across all areas of AML/CFT. For example, it is difficult to ensure that investigations of the core criminal proceeds generating predicates are prioritised, highest risk sectors are prioritised for more intense supervisory actions, etc.

164. While information on the actions taken by the various competent authorities to meet the strategic objectives, and information on the level of mitigation achieved is not comprehensive, the authorities have clearly been working together on developing counter measures. This is evident from the examples given below.

165. The NOPCML's strategic goals under its operational strategy, among others, included moving to better equipped premises, hiring additional staff and investing in financial analysis IT tools. At the time of the on-site, the authority was in the midst of the processes necessary to achieve these objectives (see section 2.2.4).

166. Although the strategy against organised crime was approved in 2021 and the authorities' work on achieving strategic objectives is recent, some important legislative amendments had already been introduced in July 2022 – these relate, among other matters, to the NAMSA's mandate to identify assets in foreign jurisdictions, expanding the agency's mandate concerning administration and capitalisation of the seized assets.

167. Important developments were introduced in relation to anti-corruption, such as: (i) legislative amendments (e.g., amendments to the CPC to extend the existing confiscation provisions); (ii) the introduction of a Government approved standard methodology for corruption risk evaluation in the central public authorities; (iii) enhancement of public procurement processes, including the introduction of a monitoring mechanism for public procurement; and (iv) engagement with the OECD with regard to an assessment of the anti-corruption strategy 2016-2020.

³¹ The document was not made available to the AT because of its sensitive nature, however, the authorities advised that the objective of this strategy is to significantly reduce illicit financial and arm flows, strengthen the recovery and return of stolen assets and combat all forms of organised crime.

168. With regard to prevention of illegal migration (especially in connection with terrorism), a national cooperation mechanism involving a range of authorities was established. A large number of operational activities were carried out during the review period resulting in identification of illegal migrants and subsequent measures.

169. The authorities recognise the importance and sensitivity of human trafficking crime involving Romanian citizens and are working to address this risk as a national priority. Activities in this field include: information campaigns on human trafficking, work on increasing investigative capacities; and strengthening cooperation with foreign stakeholders.

170. It is acknowledged that the number of STRs related to human trafficking is relatively low. The NOPCML, in cooperation with UN University Centre for Policy Research³², has launched a multi-stakeholder discussion (involving NGOs, financial market participants, FIUs and supervisory authorities) on human trafficking and modern slavery risks and the financial sector in Moldova & Romania (June 2022). This national initiative has generated outcomes: (i) increased awareness in relevant parts of the financial sector of human trafficking risks; (ii) development of human trafficking indicators and red flags; and (iii) human trafficking and modern slavery guidance and typologies report. The authorities have also commenced actions aimed at deepening understanding of TF risks, as well as NPOs' risk exposure to TF threats. Most recently, in June 2022 the NOPCML, in cooperation with a well-regarded European research body, organised a workshop on TF to strengthen cooperation between NPOs, FIUs, LEAs and supervisory authorities.

171. The IC is seen as a forum which formalises existing relationships and approaches to overseeing implementation of the mitigating actions aimed at addressing risks. There would be merit in the IC occupying a similar role with regard to national strategies.

2.2.3. Exemptions, enhanced and simplified measures

172. Romania does not apply any statutory exemptions from the FATF Recommendations applicable to covered FIs, DNFBPs or VASPs. However, as noted under Chapters 1 and 5 (IO.4), some VA related services, some services offered by legal professionals, TCSPs and accountants as well as safekeeping and administration of cash – as defined by the FATF – are not subject to AML/CFT preventative measures. This is not supported by risk assessment and the implications of this are uncertain.

173. Under the AML/CFT Law, covered FIs, DNFBPs and VASPs are required to take enhanced measures in the following situations: (i) business relationship or transactions with high risk third countries; (ii) correspondent relationships; (iii) business relationships or transactions with PEPs; (iv) other cases as stipulated in sectorial regulations or instructions issued by the competent authorities; and (v) other high ML/TF risk scenarios. The law provides a list of high-risk situations that shall be taken into consideration when conducting enterprise wide ML/TF risk assessments, and gives examples of higher risk scenarios, e.g. cash-based activities, products or transactions relating to anonymity, private banking, payments from unknown third parties, use of nominees and bearer shares, new technologies (including products, services and distribution mechanisms),

³² The Finance Against Slavery and Trafficking (FAST) Initiative was launched in September 2019 at the UN General Assembly as a project of UN University Centre for Policy Research in New York. FAST is a multi-stakeholder partnership aimed at prevention of modern slavery and human trafficking. More information: <https://www.fastinitiative.org>.

transactions relating to oil, weapons, precious metals, tobacco products, and countries identified as high risk by credible sources and in which terrorist cells operate. FSA Regulations also list a number of situations which indicate higher risk, including: (i) sectors linked to corruption; (ii) customers that are PIs or exchange offices; (iii) sectors involving significant cash amounts; and (iv) customers that use complex structures. Enhanced measures are further detailed in various other regulations, such as the NBR Regulation which also makes a reference to the recent EBA risk factor guidelines of 2022, and NOPCML guidelines on criteria and rules for recognising high or low risk ML/TF.

174. The situations of high-risk scenarios that trigger enhanced CDD measures (EDD measures) are in line with the findings of the NRA report and the AT's findings.

175. Obligated entities are permitted to apply simplified due diligence measures to low-risk clients after assessing clients' related risks and lower risk factors stipulated in the AML/CFT Law and underlying NBR, FSA and NOPCML Regulations.

176. The lower risk factors that have to be taken into account when deciding whether simplified CDD is appropriate include: (i) public companies listed on a stock exchange and subject to disclosure requirements, including for BO; (ii) customers who reside in low-risk geographical areas; (iii) life insurance policies with premiums below certain thresholds; (iv) pension schemes that meet certain conditions; and (v) products and services aimed at increasing financial inclusion, etc. Regulations published by the NBR and FSA provide that simplified measures may consist of adjusting: (i) the volume of information collected; (ii) the number of sources of information used; and (iii) the frequency and intensity of transaction monitoring and information updates. Implementing Procedures issued by the NOPCML detail the measures that obliged entities may undertake when applying SDD, e.g., reducing the scope of CDD and reducing frequency of CDD updates and degree of monitoring. These factors and measures are consistent with the general risk environment in Romania.

177. The law on financial discipline and cash payments introduces restrictions for payments in cash that vary from a daily payment of between EUR 1 000 and EUR 10 000 depending on the circumstances prescribed by the law. These thresholds do not apply to FIs and gambling operators. This cash limit was introduced in light of the prevalence of cash use in Romania; the combination of the limit and reporting of cash transactions (see IO.6 for more information on CTR reporting) are important and positive means to mitigate national cash-related risks. As discussed under IO.6, there is scope for the authorities to improve the CTR reporting system to increase effectiveness. Given the risks associated with activities undertaken by exchange offices and the number of CTRs filed by these offices, there is scope to reconsider the statutory threshold of EUR 15 000 at and above which exchange offices must conduct standard CDD. This threshold is not supported by the results of the NRA.

2.2.4. Objectives and activities of competent authorities

178. The authorities have demonstrated that the objectives and activities of the competent authorities are consistent with the evolving national AML/CFT policies and with the identified ML/TF risks to some extent.

179. While action plans to mitigate ML/TF risks identified in the NRA report had not been finalised by the end of the on-site visit, a range of strategies had been drawn up (see c.2.1 for a list of strategies) with a number of different stakeholders involved and responsible for their

implementation (see section 2.2.2 for more information on the work on achieving strategic objectives).

180. Although the extent to which the outcomes of the risk assessment are integrated into the objectives and activities of the individual competent authorities cannot be fully assessed, some case examples provided by the individual authorities show consideration of national risks in their operational activities.

The NOPCML

181. As a strategic response to safeguard the FIU function-related vulnerabilities, the NOPCML was granted additional financial resources to cover the rental expenses of new and better equipped premises,³³ including hiring additional staff (30 FTEs)³⁴, and developing IT capacity for information analysis - which should increase the authority's capacity to perform its daily functions in a more effective way. At the operational level, for example, the STR prioritisation matrix takes into account risk elements consistent with the NRA findings (e.g., PEPs and related corruption).

182. After lowering the cash transaction reporting threshold (from EUR 15 000 to EUR 10 000) in 2019 (which is seen as an important mitigating measure targeted at cash related risks, and to some extent the shadow economy and tax evasion), the number of CTRs increased significantly. This is a positive step. In order to take full advantage of this developed reporting, more sophisticated IT systems are needed to allow the NOPCML-FIU to perform more detailed and effective analysis. This is recognised as the next step forward.

183. The NOPCML's supervisory function has been strengthened by establishing a separate unit in May 2022 tasked with the supervision of the VASP sector.

Judicial and law enforcement authorities

184. The establishment of specialised directorates³⁵, namely NAD and DIOCT, that are tasked with the investigation/prosecution of offences relating to predicate offences of corruption and organised crime and terrorism signals that, at the strategic level, actions have been taken to ensure that judicial authorities prioritise the predicate offences which present the highest risks.

185. Throughout the review period, judges and prosecutors and police took part in seminars, mostly related to corruption and economic and financial crime in general, as well as several training events on organised crime, drug/human trafficking and advanced financial investigation. Although this is positive, participation in short seminars cannot systemically solve the issue of limited expertise in financial crime investigation by judicial bodies. Nevertheless, the specialised prosecutors' offices were taking some important steps towards achieving this goal. For example, in 2017, the NAD adopted a methodology for conducting financial investigations. In November 2021, the department tasked with financial investigations was expanded to increase capacity. Since 2017, the number of police officers in the NAD's judicial police body increased by 19% (from 243 police officers in 2017 to 289 in October 2022)³⁶. Similarly, in the DIOCT the number of specialists tasked with financial investigations has been gradually increasing throughout the

³³ The NOPCML moved to new premises after the on-site visit, in December 2022.

³⁴ Project for increasing human resources was initiated in July 2022, but the final approval at the governmental level was granted after the on-site – October 2022; recruitment procedures started in January 2023.

³⁵ These actions commenced before the review period.

³⁶ Following the on-site this number has further increased by 8 % and reached 311 in December 2022.

review period (18 specialists in 2017, 26 in 2019) and reached 43 in October 2022³⁷ – an increase of 238% since 2017. Resources were also increased in the Police, e.g., within the Directorate of Investigating Economic Crimes, where 25 additional financial investigators were hired by the time of the on-site visit. In addition, the decision has been taken to purchase specialised software for Police investigations involving VAs (this process has been commenced but remains to be completed).

Fiscal Administration

186. During the period 2019-2022 the Fiscal Administration was involved in mitigation efforts regarding tax evasion risks. The following measures are currently being implemented – digitisation projects aimed at eliminating paper tax returns, introduction of an electronic invoicing system, and introduction of electronic fiscal cash registers. These initiatives are aimed at achieving better efficiency in monitoring fiscal data, including analysis of tax returns, improving VAT collection, and detecting tax fraud cases. The authorities can be complemented for taking these important steps in fighting tax crimes; more time will be needed to measure their effectiveness.

Supervisory authorities

187. During the review period, the supervisory authorities developed and enhanced their risk-based supervisory approaches; see more information under IO.3. Even prior to commencing the formal NRA, the NBR was considering sector-specific ML risks, although attention to TF risk needs to be further developed. The NBR considers sectoral risks (which have informed national risks) when planning their supervisory activities, e.g., subjecting the scope/depth of on-site examinations. In general, throughout the review period supervisors have worked on developing and/or enhancing internal procedures aimed at AML/CFT supervision and regulation, including licensing and enforcement (sanctioning) matters.

188. Throughout the review period, the supervisory authorities organised awareness raising events (training, seminars) for the private sector and produced guidance documents and organised outreach aimed at promoting a clear understanding of AML/CFT preventative measures and implementation thereof; see R.34 for more information regarding various guidance papers. There were also structural changes affecting the organisational structure of the supervision function, e.g., in 2021 the NBR's supervision division was divided into off-site and on-site units, and in 2022 the NOPCML established a separate unit tasked with VASP supervision.

2.2.5. National coordination and cooperation

189. While there was interagency coordination for the purposes of the NRA, overall, formal routine co-ordination on the development of policy and at the operational level is developing. There was good coordination in relation to those authorities involved in the NRA process – this coordination is seen by the NOPCML as a significant step in the process for future coordination and cooperation. The IC should be a useful forum in approving mitigation policies and coordinating responses to those policies as well as overseeing their implementation. A number of strategies have been drawn up (see R.2, c.2.1 for more information) with a number of different stakeholders responsible for their implementation (see sections 2.2.2 and 2.2.4 above).

³⁷ After the on-site visit, number of specialists has decreased by 39.

190. At the operational level, cooperation initiatives between the NOPCML-FIU, supervisory authorities and LEAs have been beneficial.

191. Information exchange between the NOPCML and financial supervisors is two-way, with the supervisors notifying the NOPCML of the findings of on-site examinations, as well as cases where foreign, cash and suspicious transactions have not been reported by obliged entities. The NOPCML provides feedback to the supervisory authorities on STR reporting trends. In addition, there are separate discussions on the quality of STRs, mostly organised on an *ad hoc* basis. The NBR and the FSA report having routine meetings on the supervision of obliged entities forming part of larger financial groups in relation to which they both act as supervisors. Authorities report that this cooperation has consistently proved useful and resulted in an increase in *ex ante* STRs and improvements in their quality, especially quality of STRs filed by the banking sector.

192. Several measures have been taken by the POHJCC to improve the quality of the NOPCML-FIU's dissemination – triggered by a low number of indictments initiated as a result of NOPCML-FIU information. Actions taken include: (i) annual analysis of NOPCML-FIU dissemination at both the specialised and tribunal prosecutors' offices; (ii) developing guidance based on the results of such analyses, which have been made available to all prosecutors; and (iii) subsequent feedback to the NOPCML-FIU. Although the authorities can be complemented for taking actions that target improvement of NOPCML-FIU intelligence, the success of these efforts has yet to be seen, as no increasing trend of indictments based on NOPCML-FIU disseminations has been observed during the review period (neither with regard to absolute numbers, nor the proportion of indictments to NOPCML-FIU disseminations).

193. DIOCT and NAD occasionally (when they consider it necessary) discuss specific cases with the NOPCML; and some of these meetings bring in the supervisory authorities to discuss STRs and cases. These interactions are *ad hoc* and there is scope for holding regular formal meetings to discuss issues of mutual interest. LEAs have contributed to the amendments to the list of suspicious criteria aimed at guiding the private sector towards identifying suspicion (the list was last amended in 2020). In light of the findings in other Immediate Outcomes, there is scope for feedback between the LEAs and the NOPCML to be intensified; in addition, the authorities should make better use of feedback to build the capacity of the private sector in identifying suspicious activities and transactions.

194. There are meetings between the NOPCML and other supervisors, including SRBs, to develop a joint approach on AML/CFT training. There is scope to increase coordination between the NBR, the FSA and the NOPCML so as to align policy and supervisory efforts, particularly for cases where they supervise the same obliged entities. Until recently, there was limited coordination between the NOPCML, NGO and various SRBs, notwithstanding that all DNFBPs are supervised by the NOPCML and one other supervisors. In this respect, the NOPCML has recently taken a more proactive role and put in place a protocol with each of the other DNFBP supervisors (see IO.3 for more information).

195. At national level, the prevention and combating of terrorism is organised and carried out under the *National System for the Prevention and Combating of Terrorism (NSPCT)*, in which 26 public authorities participate. The RIS provides the technical coordination of the system through the Counter-Terrorism Operational Coordination Centre (CCOA). The NSPCT includes the following authorities: the NOPCML, the POHJCC, MoIA, NBR, MoFA, MoJ and the RIS. They have designated permanent representatives at the CCOA to ensure the operational exchange of data and information. Whilst its responsibilities do not touch directly on TF, the system nevertheless

demonstrates national cooperation and coordination in the area of fighting terrorism, and this will have indirect application to TF.

196. Coordination and cooperation at national level covers TFS. An *Inter-Institutional Council dealing with the implementation of international sanctions* (CIISI) covers all sanctions, including PF; it is chaired by the MFA Office for the implementation of international sanctions. CIISI meetings are arranged on an *ad hoc* basis and can be either *classified* or *non-classified*, depending on the nature of the discussion. The CIISI met once in 2017, twice in 2018, twice in 2019, and four times in 2020.

197. Coordination and cooperation extend to PF – the *Interagency Working Group for PF* (CGI) - which was established in 2016 and is responsible for the implementation of the country's PF strategy³⁸; it includes representatives from 21 authorities. The establishment of this group was triggered by the Iranian sanctions' framework and relative proximity to countries which are the subject of sanctions. The GCI holds meetings every quarter with some meetings being routine and others *ad hoc* (both in person and online); routine meetings concentrate on the PROTECTOR Programme, the main objective of which is to raise awareness of the risks arising from TFS implementation by FIs. In addition to routine meetings, the GCI holds annual activity briefings. Information on those was not made available to the AT as documents are classified. The AT has been advised that, whenever PF issues have been raised, they have included financial transactions.

198. Generally, the approach has been thoughtful, and the authorities have been alive to the importance of developing coordination.

2.2.6. Private sector's awareness of risks

199. The private sector was involved in the NRA process to a limited extent. Most of the private sector representatives met on-site were not aware of the status or findings of the NRA report, given its very recent adoption at the time of the on-site visit. A few confirmed their participation in the process by providing data to the authorities whilst some others were engaged through professional associations and bodies representing FIs and DNFBCs (including some SRBs). The NRA report, that was adopted by the IC on 15 September 2022, was planned to be published, but not published at the time of the on-site visit. Thus, at the time of the on-site visit, only the representatives of the authorities that are members of the IC were familiar with the content of the NRA report. Supervisory authorities plan to circulate a concise version of the NRA to the private sector. This was confirmed by the private sector representatives met on-site. Private sector representatives met on-site were generally able to elaborate the national risks that might materialise in their business activities, such as corruption, use of cash for illicit purposes – in line with the findings of the NRA report. As a result, some entities had been able to consider some of the national risks in their internal ML/TF risk assessments.

³⁸ Romania has developed a strategy on PF (National Strategy for Preventing and Countering the Proliferation of Weapons of Mass Destruction approved by the Supreme National Defence Council by decision 36/2002). The documents outlining implementation objectives, actions carried out by the authorities and implementation status are classified and thus were not made available to the AT.

200. The NRA report was made public on the NOPCML website after the on-site visit. A substantial proportion of awareness raising events (physically and online) on national risks discussed in the NRA report were held after the on-site visit.

201. Nevertheless, throughout the period under review the supervisory authorities routinely engaged in awareness raising in relation to FIs and DNFBPs through outreach (training) and guidance. The NBR informed that it routinely provides information on sectoral risks to their supervised sectors. This has been undertaken through specific outreach initiatives and training. The NOPCML, acting in its capacities as a supervisor and FIU, has also raised awareness in DNFBP sectors and issued a range of guidance relevant to risk understanding and recognition of ML/TF suspicion, e.g., guide on suspicion indicators and typologies (2020 and 2022) and on criteria and rules for recognising high or low risk ML/TF (2021). Further information is provided under IO.3.

Overall conclusions on IO.1

202. In general, competent authorities demonstrate a fair understanding of ML risks as well as sectoral risks. Although TF risks are understood to a lesser extent, it must be acknowledged that Romania does not exhibit features for high likelihood of TF occurrence. The lack of comprehensive statistical data hampers the depth of risk understanding.

203. The IC is tasked with the coordination role for AML/CFT, including risk assessment and mitigation efforts, which also provides a platform for national cooperation and coordination. Due to the recent nature of its establishment, full effectiveness has yet to be demonstrated. Romania also has PF coordination arrangements in place.

204. A large number of strategies (dedicated to combating various crimes, such as terrorism, corruption and human/drug trafficking) have been drawn up that mirror the general risk environment of Romania. An action plan – a document aimed at targeting the risks identified in the NRA report – was formally approved after the on-site visit. However, even prior to commencing the NRA, the authorities undertook relevant mitigating actions, such as judicial reforms to combat corruption, organised crime and TF, FIU reforms relating to capacity building in the areas of financial intelligence and supervision, issuing regulations aimed at guiding the private sector towards a comprehensive implementation of preventative measures, and working towards reducing cash-related risks.

205. Romania does not apply statutory exemptions from the FATF Standards to covered entities. Simplified and enhanced due diligence measures are in line with the general risk environment in the country.

206. A number of awareness raising events to discuss national risks followed the publication of the NRA; these actions took place after the on-site visit.

207. Romania is rated as having a moderate level of effectiveness for IO.1.

3. LEGAL SYSTEM AND OPERATIONAL ISSUES

3.1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 6

- a) The competent authorities have access to a broad range of financial intelligence and other relevant information to use in the financial investigation of predicate offences, ML, TF and in identifying the proceeds of crime. The authorities use this information to some extent as parallel investigations in some areas are not undertaken or not undertaken sufficiently effectively (see IO.7) and the quality of STRs, NOPCML-FIU analysis and the timeliness of the exchange of financial intelligence need further improvements.
- b) The NOPCML-FIU gathers financial and other information from databases and reports submitted by obliged entities. The NOPCML-FIU has direct access to all public registers necessary for its operational analysis in developing leads and connections. The STRs and other reports received contain, to some extent, relevant and accurate information which assists the NOPCML-FIU in the performance of its duties. The NOPCML-FIU has provided useful guidelines and training to assist obliged entities in their reporting duties. There are still some concerns regarding the quality of received STRs.
- c) The NOPCML-FIU's analysis and disseminations support the competent authorities' operational needs to some extent. The NOPCML-FIU's disseminations contain information from STRs, government databases and analysis, but they seldom refer to the potential predicate offence. The NOPCML-FIU rarely follows up reports to ask for additional information from obliged entities; this limits the depth and quality of the NOPCML-FIU's analysis and its utility for the LEAs. In addition, the lack of sufficient IT and human resources impedes the quality of the analysis.
- d) Since 2021 there has been significant additional funding allocated to the NOPCML-FIU to increase its technical capability and to develop and implement a new dedicated Case Management System. The strategic analysis function is still underdeveloped and does not use external data sources. The exchange of financial information between competent authorities is conducted by sending paper copies of documents via military courier which is not an efficient method.
- e) The NOPCML-FIU's cooperation with the LEAs and prosecutors is limited. The NOPCML-FIU is not member of any investigative team formed, even in the most complex cases, and is therefore unable to provide ongoing leads and intelligence except when responding to written requests from the investigating authorities. Prosecutors and LEAs do not provide the NOPCML-FIU with feedback on the quality and usefulness of its disseminations. The NOPCML-FIU does send notifications to prosecutors and LEAs related to their fields of activity, but these are not necessarily about suspected criminal activity.
- f) The NOPCML-FIU has a good working relationship with the NBR and the FSA. The authorities exchange information to enhance the supervision of obliged entities.

g) Although the authorities maintain some statistics relating to STRs and other reports, received and disseminated, more comprehensive statistics on matters relevant to the effectiveness and efficiency of AML/CFT systems are needed (see R.33).

Immediate Outcome 7

a) Romania's legal system has AML/CFT legislation which covers the required criteria in most respects. The law enforcement and investigative authorities are directed by the various prosecutors' offices. Each type of prosecutors' office has specific areas of responsibility. Not all of the prosecutors' offices pursue ML investigations and prosecutions to the same degree. Some essentially focus almost exclusively on the predicate crime. Some advance that they would benefit from greater specialised resources and training.

b) Romania is a relatively large jurisdiction with a number of different prosecutors' offices and directorates of police. Insufficient communication, cooperation and systematic coordination was demonstrated between the various prosecutors' offices. Inevitably there will be missed opportunities in the detection and investigation of ML where there are shortcomings in the integration of the prosecution system overall. The investigation and prosecution of ML is not pursued as a priority overall.

c) Domestic corruption, tax evasion, embezzlement and fraud are investigated and prosecuted as are the associated ML offences. There are, however, serious deficiencies in that the laundering of other prevalent predicates is not investigated or prosecuted adequately. Trafficking in human beings, including children, whether for sexual or some other form of exploitation is a grave crime and the laundering of those proceeds which are likely to be substantial is not pursued effectively. The same may be said for ML associated with drugs trafficking and cybercrime. Parallel investigations in these areas are not undertaken as often as they could be or not undertaken effectively.

d) The rough estimate given is that less than 10% of convictions arise where the investigation is initiated by an STR. Incoming MLA requests are not treated as a resource giving rise to ML/TF investigative opportunities. The authorities do pursue the ML of domestic financial predicates but the laundering of other domestic predicates or the laundering in Romania of crimes committed outside Romania is likely to remain undetected. These are serious shortcomings in the system, given Romania's context.

e) The Romanian authorities (with very few exceptions) only prosecute self-laundering. Third party ML is rarely investigated, and standalone ML prosecutions are rarer still. This is not only because such cases are more difficult to prosecute; it arises from the structural problem that some prosecuting authorities and LEAs are only permitted to investigate ML if the investigation of that type of predicate falls within their remit. A case where it would be possible to prove from objective factual circumstances that the property is illicit (but the predicate crime itself or the type of crime were not identifiable) would not be pursued. Romania is ill-equipped to deal with the laundering of foreign predicates with complex structures.

f) When there are convictions for ML, the sanctions applied by the Court for the ML offence are sometimes low and not dissuasive.

Immediate Outcome 8

- a) Romania actively applies measures for confiscating criminal proceeds and the instrumentalities from domestic predicates located in Romania for the most prevalent predicates but the effective confiscation of proceeds from foreign predicates and proceeds located abroad was not demonstrated. Confiscations in third party and standalone cases are rare.
- b) There is a strategy in place for asset recovery. However, additional resources for conducting financial investigations as well as practical guidance and training for prosecutors and LEAs would be beneficial to improve the application of confiscation measures in complex cases, including for confiscation of the proceeds of crime that do not originate domestically or have flowed abroad.
- c) Seized assets are overall effectively managed and when needed shared with international counterparts or returned to the victims. NAMSA has demonstrated impressive results within the short period of time of its operation.
- d) The confiscation of suspicious cross border transportation of cash is not pursued as a policy objective and the amounts of detected falsely or undeclared cross-border transactions of currency are low while no breaches have been detected for transactions of currency/BNIs via mail and cargo. Some sanctions (fines or confiscation) have been applied for false/undeclared/suspicious cash, but these cannot be considered as dissuasive.
- e) Overall, the country's confiscation results are in line with the general ML/TF risks, policies, and priorities only to some extent. The lack of comprehensive statistics and of a coordination mechanism (see IO.1) hampers the country's potential to properly assess, identify and address the vulnerabilities of the confiscation system.

Recommended Actions

Immediate Outcome 6

- a) The authorities should prioritise financial intelligence as a source from which to develop evidence and trace criminal proceeds related to ML, associated predicate offences and TF and significantly increase the degree to which financial intelligence is used.
- b) The authorities should increase the potential for exchanging information electronically to speed up the sharing of financial intelligence. The NOPCML-FIU should amend its practices when contacting obliged entities and request more information to follow-up on submitted STRs and also ask for information when the information source is another obliged entity or a foreign FIU.
- c) The NOPCML-FIU should focus its capacity on ML/TF and associated predicates to go beyond disseminating information on a limited number of transactions, to produce analysis that is of relevance to more complex ML cases involving more complex patterns or schemes of transactions between connected people.
- d) The NOPCML-FIU should considerably increase its human and technical capacities including investing more in third party databases and analysis tools. The internal IT-systems should be integrated with outside databases, encompass all information received, structured

and unstructured, from obliged entities without manual intervention, and provide an opportunity to analyse all submitted reports.

e) The NOPCML-FIU should further develop its strategic analysis function. This should be equipped with appropriate human resources and tools.

f) The NOPCML-FIU should increase the quality of STRs, inter alia, by requesting an attempt to identify the underlying predicate crime, distinguishing between ML, TF, and predicate crime reports. It should analyse the quality and quantity of the different types of reports made by the different sectors and provide direct qualitative feedback to obliged entities to increase the quality of their reporting. The authorities should further increase outreach and awareness raising activities to high-risk sectors that present low reporting numbers and/or low detection of suspicious cash transactions.

g) The NOPCML-FIU should rework its STR analysis mechanism by amending the triage criteria and scoring to accompany the risks identified in the NRA beyond corruption and cash.

h) The authorities should increase the cooperation framework and focus more on a process of operational information exchange to support criminal investigation in ML and TF cases. The LEAs and prosecutors should be encouraged to provide timely feedback and access to single disseminations throughout the history of a case, and also encouraged to provide periodic feedback on the quality of disseminations.

Immediate Outcome 7

a) Develop an overarching national AML strategy to aim for a consistent approach and methodology in AML providing detailed guidance across all areas; in particular, emphasising the need for investigations into the core criminal proceeds generating predicates to be accompanied by a parallel ML investigation.

b) Increase the capacity of financial investigators to carry out parallel financial investigations to assist investigative authorities. Provide further training to relevant authorities on conducting complex ML investigations. To develop guidance in standalone ML investigations and prosecutions and into the ML of foreign predicates with complex structures.

c) Seek to increase the number of investigations that can be pursued, as appropriate, through to prosecution for laundering of foreign predicates and significant non-financial domestic predicates (e.g., human trafficking, drug trafficking and cyber-crime).

d) Retain statistics across the various prosecution offices to record investigations, prosecutions and convictions obtained in respect of ML cases, which of those are triggered by a STR and in respect of which predicates. To also identify which are self, third party or standalone cases so that these statistics may be used to identify lacunae and inefficiencies in the investigation and prosecution of ML which may then be addressed.

e) Harvest incoming MLA requests as investigation opportunities and to develop instructions/guidelines in this regard including on how MLA requests could trigger ML investigations.

f) Develop a strategy and policy to address the deficiency that prevents certain agencies from investigating standalone ML and ensure its implementation.

Immediate Outcome 8

- a) Develop practical guidance and ensure regular training for prosecution authorities on the confiscation of the proceeds of crime, including on:
 - (i) confiscating the proceeds of laundered property, in particular in the following scenarios: autonomous ML cases where there is no conviction for a predicate offence; and those with a cross-border element (i.e., proceeds of foreign predicate crimes laundered in Romania or the outgoing laundering of illicit funds generated in Romania);
 - (ii) confiscating instrumentalities;
 - (iii) confiscating property of equivalent value;
 - (iv) confiscating from third parties;
 - (v) pursuing confiscation of property located abroad; and
 - (vi) confiscating suspicious currency/BNIs.
- b) Increase the capacity of financial investigators to carry out financial investigations in order to trace assets and pursue asset recovery.
- c) Develop sufficient IT tools for managing seized and confiscated assets.
- d) Provide continued professional development for officers from the NCA and develop relevant risk indicators for detecting and pursuing confiscation of suspicious cross border transportation of cash as a policy objective by investigating declarations of cross-border movements of significant amounts of cash, which may be an indicator of the proceeds of foreign predicate offences being laundered as well as relevant other available information (e.g., information from Border Police and NOPCML-FIU).
- e) Address the technical deficiencies identified under criterion 32.5 of the Technical Compliance Annex and increase the application of sanctions and seizures related to falsely declared or undeclared cross-border movements of currency and bearer negotiable instruments.

208. The relevant IOs considered and assessed in this chapter are IO.6-8. The Recommendations relevant for the assessment of effectiveness under this section are R.1, R. 3, R.4 and R.29-32 and elements of R.2, 8, 9, 15, 30, 31, 34, 37, 38, 39 and 40.

3.2. Immediate Outcome 6 (Financial Intelligence ML/TF)

209. The AT's findings are based on the limited statistics and other relevant information (including case studies) provided, as well as on interviews with the competent authorities.

3.2.1. Use of financial intelligence and other information

210. The competent authorities have access to a broad range of financial intelligence and other information with which to develop evidence and trace criminal proceeds from predicate offending, or subsequent laundering or (to some extent) TF.

211. Any police officer may start a ML investigation. As soon as the investigation is registered with the prosecutor's office to be given a case number, a prosecutor is appointed. Even though a prosecutor has been appointed, an investigation might be conducted entirely by the Police, but it is far more likely that the prosecutor will direct the investigation. The various types of prosecutors' offices have specific responsibilities (see R.30) and financial investigators who conduct parallel financial investigations in criminal cases (see IO.7).

212. There is a wide variety of state databases that investigative bodies, including judicial police, and the NOPCML-FIU can access to gather financial intelligence and other relevant information to conduct their investigations into predicate offences, ML and TF. The POHJCC also receives the information distributed by the NOPCML-FIU.

213. The LEAs can access basic and BO information on a timely basis through public registers maintained by the by the NTRO and the MoJ, concerning legal persons and a central register of bank accounts administered by the Fiscal Administration (see IO.5). The investigators said that they used the register of bank accounts as the first source with which to identify beneficial owners and (if necessary) they would additionally check the information held by both the banks and other public registers. The investigators and prosecutors also said that they can access the real estate register, the fiscal tax databases, and the different registers of assets (e.g., vehicles, vessels, aircraft, etc.) all of which are useful sources for collecting evidence. Although the LEAs do not have access to third party databases, they can ask for this information through the NOPCML-FIU to the extent that it is available to the NOPCML-FIU. LEAs highlighted also in the NRA NOPCML-FIU as one of their sources to obtain information on economic operators. The LEAs also actively use international networks such as Interpol, Europol, and the Camden Asset Recovery Inter-Agency Network (CARIN).

214. The on-site interviews confirmed the extent to which precautionary measures are ordered (freezing of assets – see IO.8) and some of the case examples provided (e.g., case study 3.3. under IO.7) demonstrated that the LEAs used financial and other relevant information to search for and collect the data or information on the commission of criminal offences, the identification of those who may have committed them and the identification of criminal property. Parallel investigations in some areas were nevertheless not undertaken or not undertaken sufficiently effectively (see IO.7). There are also some concerns about the quality of STRs, the quality of NOPCML-FIU's analysis and the timeliness of the exchange of financial intelligence (see below). Thus, it can be concluded that the LEAs use financial intelligence and related information to some extent only and further improvements are needed.

215. The NOPCML-FIU has direct access to all public registers necessary for the operational analysis involved in developing leads and connections, but the number of workstations required for accessing some databases (e.g., the BO registers and registers of legal persons) is limited. This hampers the timeliness with which analysis is conducted because the analyst has to devote more time to planning their work than would otherwise be the case.

216. The NOPCML-FIU also has access to adverse media information on foreign PEPs as well as information on non-resident entities in different jurisdictions through a third party database, but access to this database had been limited to one licence only and only in 2022 was an additional licence purchased. Given the risk profile of Romania (high level of corruption etc.) the limited access to such databases restricts the effectiveness of the NOPCML-FIU's analytical work.

217. The quality of the NOPCML-FIU's analysis is also affected by an insufficient number of information requests made to obliged entities. For example, the NOPCML-FIU does not follow-up

on the reports submitted by banks to gather information on CDD and connected transactions, business correspondence, IP-addresses, etc, that are essential in detection and in the analysis of suspicious activity reports. The NOPCML-FIU also did not provide any case examples, statistics, or information on requests made to obliged entities based on information received from unrelated sources (e.g., information provided by a whistle-blower or another FIU that should have triggered an inquiry). The authorities advised that cases of this type are limited which calls into question the nature of the sources of information and the quality of the analysis. A significant part of the exchange of information between the competent authorities is conducted by sending paper copies via military couriers. This is a secure channel, but the method impacts on the timeliness of intelligence and evidence collection.

218. Declared cross-border cash declarations can be directly accessed by the NOPCML-FIU and are used to highlight possible new leads during individual operational analysis. The authorities did not indicate that any ML/TF investigations had been triggered by cross-border cash movement.

219. No statistics were available on the number of requests made to different databases and to obliged entities. Some case examples were provided which demonstrated the type of checks conducted and information used by the NOPCML-FIU in developing their analysis where there was suspected criminal activity:

Case study 3.1: Embezzlement in state-owned telecom company

The NOPCML-FIU received an STR from a bank on 9 February 2015 indicating that a Romanian company X, managed by a Greek citizen, received significant transfers from a Romanian state-owned telecom company Y. The NOPCML-FIU checked different databases and analysed bank statements, identifying that the transactions on the account did not correspond to the financial statements filed by the company. The NOPCML-FIU also analysed related reports, requested additional information from a foreign FIU and identified a circular flow of funds.

The analysis of the NOPCML-FIU identified that company Y obtained services from private company X to sell codes for airtime in notably unfavourable terms and could have obtained the same services without using company X as an intermediary. The management of company Y did not pay for the services promptly, resulting in additional interest payments and compensation through the Bailiffs' Office. The embezzled funds (approximately EUR 6 389 520) were funnelled through accounts of a network of Romanian and foreign companies controlled by the same Greek citizen. The NOPCML-FIU disseminated its analysis to the POHCCJ on 16 October 2015. On 3 October 2017, the NAD initiated a criminal investigation against a manager of company Y. The case was closed because of a Constitutional Court of Romania binding decision on the application of the limitation period. EUR 2 393 000 was nevertheless confiscated on 22 February 2021 by way of special confiscation.

Case study 3.2: Individuals using payment service providers (PSPs) for international transfers with suspecting TF.

In 2017, the NOPCML-FIU received two STRs from a PSP suspecting TF arising from transactions where several individuals (living in Romania) had made several transfers (in total amount of approximately EUR 17 000) to individuals located in Egypt, Tunisia, and Turkey. Among the recipients was an individual (person A), who was - according to open-source intelligence - previously arrested (in India) for raising funds for Islamic State. The PSP also identified 8 incoming transfers in the amount of approximately EUR 4 500 to the individuals possibly connected to person A.

The NOPCML-FIU conducted checks and identified the senders, including that they used multiple accounts in Romanian banks with cash deposits, withdrawals and receipts from France and further transfers to Tunisia. The information about the network of individuals related to potential TF was referred to the POHCCJ and RIS on 10 November 2017.

The investigation by RIS confirmed the connection of person A with the financial contribution to the Islamic State and that one of senders of the funds to person A was a Tunisian citizen (person B) living in Romania, who presented a high degree of Islamic radicalisation and on-line propaganda for the benefit of Daesh. Person B was declared unwanted for 10 years by Bucharest Court of Appeal on 1 August 2017 and forced to leave Romania. Romanian authorities shared the investigation results about person B with foreign partners. Regarding the other individuals involved in those transactions, the investigative authorities concluded that those were not carried out for TF purposes.

220. No statistics are maintained on STRs leading to indictments and convictions. The rough estimate given by the authorities is that less than 10% of ML convictions arise where the investigation is initiated by a STR. Possible reasons for STRs triggering investigations in only 10% of cases leading to a ML conviction include the following: (i) parallel investigations in some areas are not undertaken as often as they could be or not undertaken effectively (see IO.7); and (ii) the quality of the case reports disseminated by NOPCML-FIU which need improvement (see below under section 3.2.3).

3.2.2. STRs and other reports received and requested by competent authorities

221. The NOPCML-FIU is the central authority for receiving, assessing, analysing, and disseminating STRs from the obliged entities. It has two on-line reporting systems available: one for credit institutions; the second for the rest of obliged entities. The NOPCML-FIU receives four types of reports: (i) suspicious transaction reports (STRs); and (ii) three types of threshold-based reports - CTRs (cash transactions of EUR 10 000 or more), external transfer reports (ETRs) (cross-border transactions of EUR 10 000 or more) and fund transfer reports (FTRs) (money remittance transactions of EUR 2 000 or more).

222. The NOPCML-FIU receives STRs that, to some extent, contain relevant and accurate information assisting the NOPCML-FIU in the performance of its duties. The NOPCML-FIU has regularly published relevant guidelines, typologies and conducted training in an effort to raise obliged entities' risk awareness and to stress the importance of filing appropriate reports which identify and assess suspicious and higher risk transactions.

223. Until mid-2019 there was an option to send reports in paper-format and a significant proportion of obliged entities chose this option (see statistics below). Although since mid-2019, all reports have been sent electronically, the NOPCML-FIU still prints them out and inputs some information manually onto its database. This practice slows down the analysis of STRs and allows for potential errors which can impede the identification of suspicious activity and the discovery of patterns when matching them with threshold-based reports.

224. The authorities do not keep statistics on the types of content of the STRs received, including how many relate only to predicate crimes and, if a STR concerns ML, to which predicate crime the ML is suspected to be connected. Since there is no obligation to distinguish in the STR whether the suspicion relates to ML/TF and/or associated predicate offences, the STR field describing the suspicion is often written in broad terms which do not describe the nature of the suspicion of ML/TF or the suspected underlying predicate crime. The NOPCML-FIU has to largely work out what the underlying criminal activity could be. This makes it difficult for the NOPCML-FIU to detect late and defensive reporting. From the examples of STRs provided to the AT, the reporting threshold seems to be low and points towards a tendency to merely report what is unusual rather than where criminal activity is suspected. Although Romania is regarded as having a high risk of corruption, it is notable that the authorities have not detected any cases of tipping-off where STRs have been filed.

Table 3.1: Number of STRs submitted by obliged entities on paper and in electronic format

| Obliged entities | 2017 | 2018 | 2019 | 2020 | 2021 |
|------------------------------|--------|--------|--------|--------|--------|
| Total number of STRs | 12 683 | 11 993 | 15 841 | 19 468 | 15 368 |
| STRs submitted on paper | 5 240 | 4 920 | 2 610 | 0 | 0 |
| % of STRs submitted on paper | 40.7% | 41% | 16.5% | 0 | 0 |

STRs

225. Over the assessment period (2017 to 2022 second quarter), STRs have been submitted predominantly by banks and MVTs operators/Pis (see Table 3.2). The number of reports submitted by banks has increased between 2017 and 2022 by 79%. The branches of foreign banks in Romania submit proportionately more STRs compared to domestic banks. According to the NOPCML-FIU, foreign branches file defensive reports from fear of supervisory enforcement action. The number of reports submitted by MVTs operators/Pis has decreased between 2017 and 2022 by 35%. Given that the largest ML risk in the country arises from the use of cash (see Chapter 1 (IO.1)), the decrease in the number of reports submitted by MVTs operators/Pis is not in line with the country's risks (the decrease happened already before the COVID-19 pandemic and therefore could not have related to lockdowns).

226. The number of STRs made by notaries has declined considerably in recent years. This has been attributed by the NOPCML-FIU to changes in behaviour and a fall in number of construction projects due to the Covid-19 pandemic.

227. The fourth biggest reporters which, like the MVTs/PI sector, handle cash are exchange offices. Exchange offices' reporting level has decreased 97% between 2017 and 2021 (from 638 to 17 reports). Given that exchange offices report significantly more cash transactions in CTRs than MVTs operators, it is possible that exchange offices have left a significant number of suspicious transactions undetected and unreported. The NOPCML-FIU also explained that the large number of reports from exchange offices in 2017 related to one operator and not, in fact, linked to suspicion.

228. STRs reported by different DNFBPs have been consistently below expected levels considering the risk context of Romania. It is noted that Romania finalised and adopted their first NRA only in 2022 and therefore that obliged entities have not been able to assess whether their reporting is in line with the country’s risk assessment (see IO.1). The NRA has identified the use of shell companies, use of “strawmen” in company formation, and high risk presented by company service providers. The reporting levels, however, of those involved in the formation of legal persons, including lawyers and accountants, is far below what might be expected. Although the real estate sector is assessed as high risk in the NRA, the representatives of this sector have only filed less than 10 STRs during the whole assessment period. Interestingly, the data shows that VASPs were making STRs to the NOPCML-FIU from 2017 although VASPs were not then regulated, and they became obliged entities only on 15 July 2020. Reporting levels are considered also at Chapter 5 (IO.4).

229. No statistics were available for STRs filed where the suspicion was TF. The authorities said that the overall number of TF-related reports (with the suspicion identified as being of TF either by the obliged entity or the NOPCML-FIU) was small. The majority of these reports originated from MVTS operators and were related to transactions with high-risk jurisdictions, and other sectors reported TF suspicions very rarely. The low number of reports where the suspicion was TF could also be related to the lower level of awareness in respect of TF in this area (see IO.4).

Table 3.2: Number of STRs submitted by obliged entities

| Obliged entities | 2017 | 2018 | 2019 | 2020 | 2021 | 30.06.2022 |
|---|-------------|-------------|-------------|-------------|-------------|-------------------|
| Banks | 6 185 | 7 182 | 10 269 | 12 883 | 11 097 | 5 827 |
| Lenders/leasing | 4 | 3 | 21 | 11 | 12 | 11 |
| MVTS operators/Pis | 4 570 | 3 047 | 3 641 | 4 930 | 2 959 | 1 548 |
| Issuing or managing means of payment | 23 | 0 | 0 | 0 | 18 | 1 |
| Securities firms | 47 | 11 | 28 | 55 | 10 | 4 |
| Collective investment schemes | 0 | 0 | 0 | 0 | 0 | 0 |
| Life insurance companies | 30 | 38 | 59 | 32 | 26 | 8 |
| Exchange offices | 638 | 70 | 52 | 24 | 17 | 134 |
| Other FIs | 0 | 0 | 0 | 0 | 11 | 1 |
| Judicial liquidators | 3 | 0 | 0 | 0 | 1 | 1 |
| Other non-banking Financial Institutions | 33 | 0 | 76 | 13 | 21 | 10 |
| Casinos | 1 | 0 | 0 | 5 | 1 | 0 |
| Gambling service providers | 0 | 0 | 1 | 34 | 105 | 72 |
| Real estate agents and real estate developers | 0 | 0 | 0 | 0 | 6 | 0 |
| DPMS | 0 | 0 | 0 | 0 | 0 | 0 |
| Lawyers | 7 | 2 | 2 | 3 | 4 | 1 |
| Notaries (NUNPR) | 813 | 1 090 | 1 193 | 762 | 567 | 274 |
| Other independent legal professionals | 0 | 0 | 0 | 0 | 0 | 0 |

| | | | | | | |
|---|--------------|--------------|--------------|--------------|--------------|-------------|
| Accountants (BELAR) (including auditors/ valuers) | 10 | 1 | 5 | 9 | 11 | 0 |
| TCSPs | 0 | 0 | 0 | 0 | 0 | 0 |
| VASPs | 2 | 13 | 2 | 2 | 4 | 2 |
| Other legal persons trading in goods | 15 | 34 | 11 | 5 | 2 | 0 |
| Public Ministry | 139 | 133 | 76 | 61 | 60 | 14 |
| MIA | 87 | 81 | 87 | 93 | 120 | 69 |
| MOF (Fiscal Administration) | 72 | 47 | 31 | 45 | 25 | 7 |
| NBR | 100 | 192 | 246 | 475 | 248 | 76 |
| FSA | 3 | 4 | 0 | 4 | 1 | 1 |
| Petitions | 37 | 27 | 19 | 8 | 16 | 10 |
| NOPCML-FIU own analysis | 43 | 10 | 12 | 9 | 14 | 110 |
| Other institutions | 1 | 7 | 6 | 5 | 12 | 4 |
| Government | 0 | 1 | 4 | 0 | 0 | 0 |
| TOTAL | 12863 | 11993 | 15841 | 19468 | 15368 | 8185 |
| <i>Incl. reports made under consent regime</i> | 326 | 431 | 613 | 1 147 | 1 532 | 749 |

230. Romania has also introduced a consent regime in which obliged entities ask for feedback from the NOPCML-FIU before they execute a transaction. The positive trend of reports under the consent regime could indicate the adoption of better procedures, a raised awareness on the part of obliged entities about ML/TF transactions, and more advanced technical monitoring solutions to detect suspicious activities. The NOPCML-FIU also advised that they have noticed defensive reporting in cases where obliged entities have reported 1-euro transactions, or multiple consecutive transactions by the same client, or when the transactions are in line with the business activity of the client. There have also been duplicated reports on the same transactions (incoming and outgoing transaction from two clients) by the same obliged entity. Most of these kinds of STRs originate from banks. Considering the risk context and extensive use of cash, other sectors should be able to detect, suspend and report more suspicious transactions before they are executed.

Table 3.3: Transactions covering consent regime reported to the NOPCML-FIU

| Obliged entities | 2017 | 2018 | 2019 | 2020 | 2021 | 30.06.2022 |
|---|------------|------------|------------|--------------|--------------|------------|
| Banks | 277 | 393 | 549 | 1085 | 1492 | 755 |
| Leasing | 0 | 0 | 0 | 0 | 3 | 9 |
| MVTS operators/PIs | 27 | 9 | 43 | 31 | 7 | 1 |
| EMIs | 0 | 0 | 0 | 0 | 1 | 0 |
| Securities firms | 0 | 1 | 0 | 3 | 1 | 0 |
| Other non-banking FIs | 0 | 0 | 0 | 1 | 0 | 0 |
| Insurance | 17 | 26 | 19 | 23 | 9 | 4 |
| Notaries | 2 | 0 | 2 | 0 | 3 | 1 |
| Casinos and gambling | 1 | 0 | 0 | 4 | 16 | 0 |
| Accountants, auditors, appraisers, business consultants | 1 | 0 | 0 | 0 | 0 | 0 |
| VASPs | 1 | 2 | 0 | 0 | 0 | 0 |
| Total | 326 | 431 | 613 | 1 147 | 1 532 | 770 |

| | | | | | | |
|---|-----|-----|-----|-----|-----|---|
| <i>Number of transactions suspended under the consent regime</i> | 232 | 295 | 430 | 781 | 133 | 6 |
|---|-----|-----|-----|-----|-----|---|

231. In 2021, obliged entities filed in total 15 368 STRs and out of those 1 532 (10%) were reports under the consent regime where the transaction was already blocked by the obliged entity itself or where it had turned to the NOPCML-FIU to block the funds. By a considerable margin, the majority of STRs made under the consent regime originate from banks. Over the years, the share of such reports from MVTs operators has decreased, but this reproduces the overall trend in respect of the number of STRs and CTRs filed by that sector.

232. The NOPCML-FIU is able to block a transaction for 48 hours, and to extend that blocking for an additional 72 hours with the permission of the prosecutor's office. If the suspicion remains, a criminal investigation is opened, and funds are seized in the criminal proceedings. Out of the 1 532 reports under the consent regime, obliged entities blocked 50 transactions and the NOPCML-FIU blocked an additional 133 transactions (approximately 9% of the consent regime STRs) for 48 hours. The POHCCJ extended the suspension in 8 cases (approximately 0.5% of the consent regime STRs). There are no statistics on in how many of these cases the funds were ultimately further seized and confiscated in criminal proceedings. Furthermore, the NOPCML-FIU has never postponed a transaction when it has itself identified a suspicious activity.

233. The number of suspended transactions significantly dropped in 2021. This pattern mirrors the considerable decline in reporting suspicion of ML/TF to prosecutors' offices (see below under section 3.2.3). The authorities advised that this decrease in the level of postponement was agreed between the authorities to avoid the risk of the owners of the funds being tipped-off and thereby damaging potential investigations. The postponement mechanism is not used effectively, and the postponement rights of the NOPCML-FIU do not provide an efficient solution for suspending criminal assets for further seizure and confiscation.

234. The NOPCML-FIU started to provide quarterly feedback to obliged entities and the prudential supervisory authorities about transactions covered by the consent regime in 2021. Although this quarterly feedback contained qualitative elements, it was predominantly quantitative in nature and therefore did not provide information relevant to them to enable improvements in their reporting activity. During 2021, the NOPCML-FIU provided feedback 96 times and notifications were almost evenly distributed between different sectors.

Other forms of reporting (CTRs, threshold and mandatory reporting, etc.)

235. Obligated entities have an additional obligation to report transactions which do not present any indicators of suspicion. All obliged entities are obliged to report to the NOPCML-FIU cash transactions (CTRs) in Romanian lei or in foreign currencies, which are equal to or above the equivalent of EUR 10 000 (up until the end of 2019, it was the equivalent of EUR 15 000) either in single or related transactions. Furthermore, credit institutions and FIs have to file ETRs to and from accounts in Romanian lei or in foreign currencies, which are equal to or above the equivalent of EUR 10 000 (until the end of 2020 it was the equivalent of EUR 15 000) either in single or related transactions. Money remitters must also file FTRs which are equal to or above the equivalent of EUR 2 000. A single cash transaction report could contain multiple transactions.

Table 3.4: Number of CTRs submitted by the obliged entities

| | 2017 | | 2018 | | 2019 | |
|-----------------------|-------------|--------------------|-------------|--------------------|--------------|--------------------|
| | CTRs | No of transactions | CTRs | No of transactions | CTRs | No of transactions |
| Banks | 4210 | 8 049 797 | 4030 | 7 818 133 | 4580 | 8 168 695 |
| MVTS operators | 45 | 855 | 64 | 1 020 | 54 | 570 |
| Exchange offices | 2736 | 8 796 | 2641 | 10 364 | 6013 | 11 848 |
| Other non-banking FIs | 139 | 588 | 152 | 868 | 527 | 2 062 |
| Gambling | 160 | 297 | 168 | 203 | 643 | 772 |
| Casinos | 247 | 2 781 | 328 | 2 942 | 337 | 1 184 |
| Notaries | 1666 | 96 | 1243 | 81 | 1279 | 488 |
| Other DNFBPs | 0 | 0 | 2 | 2 | 3 | 3 |
| Others | 513 | 2 730 | 343 | 2 407 | 579 | 775 |
| Total | 9716 | 8 065 940 | 8971 | 7 836 020 | 14015 | 8 186 396 |

| | 2020 | | 2021 | | 30.06.2022 | |
|-----------------------|--------------|--------------------|--------------|--------------------|-------------|--------------------|
| | CTRs | No of transactions | CTRs | No of transactions | CTRs | No of transactions |
| Banks | 5682 | 8 759 898 | 5798 | 1 0868 059 | 2814 | 5 517 870 |
| MVTS operators | 113 | 2 452 | 251 | 1 803 | 31 | 114 |
| Exchange offices | 7724 | 12 892 | 4892 | 27 534 | 448 | 2 399 |
| Other non-banking FIs | 2777 | 3 227 | 1690 | 9 423 | 529 | 6 015 |
| Gambling | 1447 | 1 603 | 2632 | 8 416 | 1869 | 5 957 |
| Casinos | 43 | 188 | 726 | 4 433 | 383 | 3 276 |
| Notaries | 3117 | 664 | 204 | 807 | 95 | 423 |
| Other DNFBPs | 1 | 1 | 4 | 4 | 0 | 0 |
| Others | 55 | 690 | 294 | 2 402 | 122 | 882 |
| Total | 20959 | 8 781 615 | 16491 | 10 922 881 | 6291 | 5 536 936 |

236. The above statistics show a significant number of cash transactions conducted in Romania. The declining number of CTRs filed by MVTS operators follows a decreasing trend in the number of STRs made by the same sector. Although the number of CTRs made by other non-banking FIs has decreased in recent years, the number of transactions in the reports has significantly increased. The number of CTRs from exchange offices has dropped significantly in the first half of 2022. The substantial number of CTRs and associated transactions in casinos is not in line with the low number of STRs filed by the sector. The higher number of CTRs for transactions before 2021 for notaries is because until mid-2020 the majority sent CTRs not through the electronic reporting system but in different forms and therefore the statistics on the number of transactions are not accurate. The NOPCML-FIU explained that the number of CTRs from notaries has decreased since 2019 due to restrictions in accepting cash payments for certain transactions and the smaller number of reports from casinos in 2020 was related to the Covid-19 lockdown.

Table 3.5: Number of ETR submitted by the obliged entities

| | 2017 | | 2018 | | 2019 | |
|------------------------------------|-------|--------------------|-------|--------------------|-------|--------------------|
| | ETRs | No of transactions | ETRs | No of transactions | ETRs | No of transactions |
| Banks | 3 792 | 2 901 925 | 3 678 | 3 485 671 | 4 146 | 3 983 971 |
| Romanian branches of foreign banks | 775 | 355 521 | 711 | 410 825 | 689 | 52 4832 |
| Romanian branch of foreign FI | 0 | 0 | 0 | 0 | 15 | 4738 |
| Others | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | 4 567 | 3 527 446 | 4 389 | 3 896 496 | 4 850 | 4 513 541 |

| | 2020 | | 2021 | | 30.06.2022 | |
|------------------------------------|-------|--------------------|------|--------------------|------------|---------|
| | ETRs | No of transactions | ETRs | No of transactions | ETRs | ETRs |
| Banks | 4 877 | 2 436 534 | 5100 | 3 643 098 | 2 426 | 2079787 |
| Romanian branches of foreign banks | 1017 | 1 363 756 | 1112 | 1 784 276 | 555 | 985704 |
| Romanian branch of foreign FI | 83 | 8 635 | N/A | 6 882 | 31 | 3228 |
| Others | 3 | 4 | 71 | 21 | 304 | 918 |
| Total | 5 980 | 3 808 929 | 6283 | 5 434 277 | 3 316 | 3069637 |

237. Credit institutions and FIs are obliged to submit ETRs. Whilst it is understandable that the larger proportion of ETRs will be from banks, the low number of ETRs from other FIs could mean that they are not able to fulfil their ETR reporting obligations, or they cannot identify related transactions, or both. As these FIs have accounts in banks, the ETRs from the banks will include the majority of the external transfer operations carried out by other FIs, with the limitation that the banks cannot detect the related transactions of the individual clients of the FIs.

Table 3.6: Number of FTR submitted by MVTS operators

| | 2017 | 2018 | 2019 | 2020 | 2021 | 30.06.2022 |
|------------------------|------|------|------|------|-------|------------|
| | FTRs | FTRs | FTRs | FTRs | FTRs | FTRs |
| Number of reports | 0 | 0 | 0 | 0 | 392 | 371 |
| Number of transactions | 0 | 0 | 0 | 0 | 8 839 | 14 412 |

238. Since May 2021, MVTS operators must also file FTRs to NOPCML-FIU which are equal to or above the equivalent of EUR 2 000 (until mid-2021 FTRs were reported in the format provided for CTRs). Whilst the number of transactions by MVTS operators has increased between mid-2021 and mid-2022, the number of FTRs has slightly decreased over the same period. According to NOPCML-FIU there could be several reasons for this: registration of new reports; older

transactions arising from corrections previous reports; and option for obliged entities to accumulate several transactions in one report.

239. The NOPCML-FIU collects statistical data about the number of CTRs/ETRs/FTRs and the number of transactions and amount of funds covered. CTRs/ETRs/FTRs reports are assessed by operational analysis in case the same entities are reported in STRs and the STR is subject to an in-depth analysis. CTRs/ETRs/FTRs are used to develop typologies and to cross reference with cash declarations submitted at the border crossing and the statistical overview is provided in the annual activity reports made by the NOPCML.

240. Banks account for the vast majority of CTRs/ETRs and their reporting has slightly increased over the years. The reporting by exchange offices as well as casinos and gambling operators have also increased over the years, and this corresponds to the country's risk context and significant use of cash in everyday activities. If obliged entities identify suspicious elements in respect of cash transactions over the threshold, they have to file a STR in addition to a CTR. As can be seen from a comparison of STRs and other types of reports, there is a significant mismatch, showing that several sectors, including MVTs operators, exchange offices, and gambling operators may have filed threshold-based reports and yet have not been able to identify where there ought to be suspicion and to file additionally a STR. This could indicate under-reporting. The NOPCML-FIU has also not analysed possible non-reporting or tipping-off cases.

Cross-border declarations

241. The NOPCML-FIU has direct access to the database of the Fiscal Administration, where the cross-border declarations of cash and BNIs are recorded. Additionally, the NCA files STRs to the NOPCML-FIU if they suspect ML/TF regarding cross-border cash entering or leaving the EU.

Table 3.7: Declarations and identified non-declarations on cash and BNIs by the NCA

| | 2017 | 2018 | 2019 | 2020 | 2021 | 2022* | Total** |
|---|-------------------|-------------------|---------------|---------------|---------------|-------------------|----------------|
| Cross-border cash declarations | 1 461 | 1 422 | 1 187 | 664 | 995 | 2 207 | 7 936 |
| Amount in declarations (EUR) | 186 322 356 | 217 145 008 | 80 845 452 | 48 390 096 | 87 453 001 | 228 336 697 | 848 492 610 |
| Identified undeclared cases | 22 | 17 | 17 | 6 | 6 | 4 | 72 |
| Amount in non-declarations (EUR) | 564 442 | 111 141 | 155 324 | 130 368 | 60 951 | 1 638 540 | 2 660 766 |
| Cases with ML/TF suspicion reported to the NOPCML-FIU*** | 4 | 9 | 0 | 2 | 0 | 2 | 17 |

*Until 30 June 2022.

** Until 3 June 2021, all cases of declaration, non-declaration and suspicions were sent to the NOPCML-FIU on paper. After 3 June 2021 the NCA records the information obtained and transmits it to the NOPCML-FIU electronically via OLAF - AFIS application CIS CASH + module.

***Suspicion related only to declared cash.

242. The number of identified undeclared cash cases is small and the number of cases identified where there has been suspicion of ML and a report made to the NOPCML-FIU has been in single figures throughout the assessment period. There have been no cases identified with a

suspicion of TF. The NCA advised that they do not have typologies and higher risk indicators for assessing cash couriers (see IO.8). Considering the extensive use of cash in the Romanian economy, as well as the fact that the country lies on the Western Balkan smuggling route and has borders with several non-EU Member States, the number of identified undeclared cases, and the number of cases in which there has been suspicion of ML/TF, are very low and not in line with the country's ML/TF risks. That said, Romania has introduced since mid-2021 a legal requirement that goes beyond the standards to declare precious metals and stones which are worth over EUR 10 000, and which have been taken over the external border of the EU. Here too, the NCA has yet to identify any undeclared cases.

3.2.3. Operational needs supported by FIU analysis and dissemination

243. The NOPCML-FIU's analysis and disseminations support the competent authorities' operational needs to some extent. The NOPCML-FIU disseminations are structured and contain information from STRs, national databases and an analysis but they seldom refer to the potential predicate offence. A lack of sufficient IT and human resources impede the quality of conducting the analysis.

244. The overall number of reports that are disseminated further is modest as can be seen from the table below.

Table 3.8: Number of cases disseminated to different authorities

| | 2017 | 2018 | 2019 | 2020 | 2021 | 30.06.2022 |
|--|--------------|--------------|--------------|--------------|--------------|-------------|
| Total number of received STRs from obliged entities | 12863 | 11993 | 15228 | 19468 | 15368 | 8185 |
| ML/TF cases disseminated to POHCCJ | 675 | 622 | 516 | 674 | 203 | 20 |
| TF cases disseminated to RIS* | 5 | 11 | 11 | 0 | 24 | 19 |
| Suspicion of other criminal offences disseminated to LEAs | 569 | 502 | 432 | 542 | 709 | 400 |
| Cases disseminated to Police* | - | - | - | - | 583 | 396 |
| Cases disseminated to POHCCJ and DIOCT* | - | - | - | - | 124 | 4 |
| Cases disseminated to NAD* | - | - | - | - | 2 | - |
| Total number cases disseminated | 1 249 | 1 135 | 959 | 1 216 | 1 645 | 839 |

**From total number of disseminated cases.*

245. The above Table 3.8 describes the number of cases disseminated to different authorities (more details on content of disseminated cases are explained below). The statistics provided compare the number of received STRs with the number of cases disseminated and therefore the usability of STRs cannot be calculated, as the calculations do not reflect the number of disseminated STRs accurately since one disseminated case could contain several STRs as well as threshold-based reports, that are related to the same subjects. The authorities advised that around 70-90% of the disseminations were initiated as criminal investigations which rarely ended up being prosecuted with the possibility of a conviction, indicating the modest quality of STRs. The significant decrease of ML/TF case reports disseminated to the POHCCJ in 2021 and the further decline in 2022 is the result of meetings and discussions between the NOPCML-FIU

and the POHCCJ with the aim of concentrating on more complex ML/TF cases and increasing the usefulness of case disseminations to the judicial authorities. The analysis of possible predicate offences, which was also sent earlier to prosecutors' offices for the initiation of a criminal investigation are (since May 2022) disseminated to LEAs for information. The impact of this change in the dissemination process on the number of prosecutions and indictments cannot yet be determined as investigations are lengthy and still ongoing. On the positive side, an indicator of the quality of the analysis by the NOPCML-FIU is the considerable number of spontaneous disseminations to foreign counterparts (see IO.2).

246. The significant decrease in the dissemination of cases in which ML/TF is suspected since 2021 (see Table 3.8) is accompanied by an increase in disseminations in which crimes other than ML/TF is suspected. This can be explained by a significant amount of the NOPCML-FIU's resources being tied up in analysing financial information about other miscellaneous criminal offences and not being dedicated to the core function of a FIU, which is enriching financial intelligence in relation to ML, associated predicate offences and TF.

247. The numbers for disseminating cases related to TF suspicion are low. The authorities have not compiled and published a list of higher risk TF countries and there is lower awareness and guidance on this topic. The authorities explained that all reports with a TF connection are disseminated to the RIS.

248. It must be also noted that until the adoption of the revised AML/CFT Law in mid-2019 the NOPCML-FIU, operated a "Plenary", which consisted of representatives of the MoF, MoJ, MIA, POHCCJ, NBR, Court of Accounts and the FSA. The Plenary was a decision-making structure appointed for a period of 5 years, by decision of the Government, at the proposal of the represented institutions. One of the primary tasks of the Plenary was to approve the analysis conducted by the NOPCML-FIU before dissemination to the judicial authorities. As the Plenary had the authority to delay and veto the dissemination of case analyses, it directly interfered with the autonomy and operational independence of the NOPCML-FIU. Since mid-2019, disseminations are at the discretion of the President and Vice-President of the NOPCML-FIU and therefore operational independence of the NOPCML-FIU has been restored.

FIU staffing and IT

249. The NOPCML is headed by a President and a Vice-President who are appointed for a term of four years and may be reinstated once for a further term of four years. The office is composed of: (i) President Cabinet; (ii) Vice President Cabinet; (iii) Control Body Compartment; (iv) Internal Public Control Compartment; (v) Human Resources Management Compartment; and (vi) General Operative Directorate (which consists of 3 Directorates: Information Technology, Databases and Statistics Directorate; Secretariat, Registry, Archive Directorate; and Analysis and Processing of Information Directorate); and (iv) other directorates subordinate to NOPCML President (Prevention, Supervision and Control Directorate; Cooperation, International Sanctions and Terrorism Financing Directorate; Legal Methodology and Relationship with the Parliament Directorate; and Economic-Financial and Administrative Directorate). The staff of the NOPCML-FIU office is comprised of a specialised staff of financial analysts, specialised auxiliary staff of assistant analysts, as well as contract staff holding positions specific to the budgetary sector, consisting of drivers and workers³⁹.

³⁹ NOPCML-FIU organigram, [O.N.P.C.S.B. - Organigrama \(onpcsb.ro\)](https://onpcsb.ro). Activity Report 2021, p. 84-85, [O.N.P.C.S.B. - Raport activitate \(onpcsb.ro\)](https://onpcsb.ro).

250. NOPCML-FIU staffing has remained unchanged over the last five years (see Table 3.9). During the whole assessment period a significant proportion of positions remained vacant because of the limited budget (see Table 3.10). There is a shortage of staff in several core functions of the NOPCML-FIU. Over the last five years there have been only two employees conducting strategic analysis and around 60 employees (from around 100) are analysts who also have supervisory duties monitoring compliance by FIs and DNFBPs with the AML/CFT Law (the in meaning of IO.3). Considering the significant number of STRs and other reports received, and amount of manual work needed to analyse these reports (e.g., all reports need to be inserted onto databases manually and later only Excel-based analytical tools are available), the lack of resources available for operational work (operational and strategic analysis) is evident. Moreover, the NOPCML-FIU advised that its salaries are not competitive with private sector salaries resulting in the loss of staff to the private sector.

Table 3.9: Number of employees in the NOPCML-FIU

| | 2017 | 2018 | 2019 | 2020 | 2021 | 30.06.2022 |
|---|------|------|------|------|------|------------|
| Number of full-time employee positions | 130 | 130 | 130 | 130 | 130 | 130 |
| Positions filled | 107 | 104 | 96 | 100 | 106 | 109 |

251. The budget of the NOPCML-FIU (see Table 3.10) indicates limited resources (around 7 - 10% from total budget) for core activities of the NOPCML-FIU (e.g., maintenance of IT-systems, license fees for different databases and IT tools, international cooperation, participating in different fora, etc.) for most of the assessment period.

Table 3.10: Budget of the NOPCML-FIU (values in in thousand Euros)

| | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 |
|---|-------|-------|-------|-------|---|--------------------------------|
| Staff expenditure | 2 638 | 2 811 | 2 959 | 2 760 | 2 858 | 3 004 |
| Administrative and IT expenses | 318 | 336 | 276 | 223 | 442 | 715 |
| Additional budget for new Integrated Information System | 0 | 0 | 0 | 0 | 3 142 (separate allotment not included in the budget) | 2 248 (included in the budget) |
| Total | 2 956 | 3 147 | 3 235 | 2 983 | 3 300 | 5 967 |

252. The NOPCML-FIU's current analytical tools require improvement to enhance its capacity to conduct complex operational and strategic analysis. The case management system of the NOPCML-FIU is internally managed and contains information about cases analysed, STRs received, threshold-based reports, foreign requests, and spontaneous information received from foreign counterparts. Confidentiality/information security is ensured since the case management system is cut off from the public internet reinforcing the security of the system, and access to digital information is restricted on a need-to-know basis⁴⁰.

253. The IT-system currently used, described as a legacy system, requires significant manual work thereby significantly hindering the timeliness and efficiency of access to financial intelligence and the conduct of financial analysis. There are significantly limited automated data

⁴⁰ Need-to-know basis - access to the information must be necessary for one to conduct one's official duties.

retrieval possibilities, which means that a significant amount of data from STRs and information exchanged with foreign authorities must be typed or copied in manually. Information from STRs and other reports is inserted into the database partially manually allowing human errors and thus hindering the effective use of financial intelligence. Furthermore, the existing system does not allow for the integration of automated data searches to different external databases, which therefore must be searched manually by the analyst (from separate non-integrated workstations). The NOPCML-FIU does not have access to dedicated blockchain analytical tools, which would assist them in supervisory activities and analysing the STRs related to VA transactions. There are currently no tools for visualisation and account statements are analysed in Microsoft Excel. The schemes of transaction chains are drawn in Microsoft Word or Microsoft Excel. This has serious impediments on the quality of analysis as well as timeliness and seems to be one of the main reasons why until 2021 the information the NOPCML-FIU disseminated to the LEAs was primarily about single transactions, missing patterns of transactions as well as schemes of transactions and connected people.

254. There has been a significant positive development since early 2021 when the NOPCML-FIU started to develop technical specifications for a new integrated information system. The NOPCML-FIU conducted analysis and tendered for the new IT-system during 2021. During 2022 and before the on-site assessment, the NOPCML-FIU purchased the necessary hardware, software licenses and received the majority of the modules for the new IT-system. As the testing, training and full implementation were scheduled to be completed by the end of 2022/start of 2023, it was not possible to assess to what extent the efficiency of the NOPCML-FIU and its core functions will be positively affected from the deployment of the new IT system and automation of previously largely manual operations.

Operational analysis

255. The NOPCML-FIU has a process in place for reviewing and prioritising STRs. However, the STR review and prioritisation mechanism should be amended to include risks identified in the NRA beyond corruption and cash.

256. Incoming STRs go through two levels of risk-scoring and triage. During the 1st level triage, analysts (there are two analysts that do this job at this stage) compare the information in the paper based STR against 15 indicators: 9 of them are connected to sectors or products, such as cash, VAs, forex, real estate, currency exchange, free zones, etc. These indicators were created before the results of the NRA were available, potentially leading to situations where some material sectors or important STRs from non-material sectors were left unnoticed. There are 6 indicators related to other high-risk elements, such as connection to PEPs, OCGs or any other negative media information. If at least one of the indicators is present, the analyst forwards the paper based STR to the 2nd level triage to another analyst (2nd level triage, including the insertion of data, is handled by seven analysts). Before the 2nd level triage, the STRs are manually inserted on the database and additional files accompanying the STRs are uploaded to dedicated folders in the internal computer network in a separate file server. Those attachments remain searchable for analysts in the file server, but information is not in a structured way added to the NOPCML database containing the STRs and this provides another separate interface for the analysts to use.

257. After insertion, the analysts in the 2nd level triage access the databases available to the NOPCML-FIU as well as open-source information and calculate a risk-score for the report. The scoring considers 21 indicators which each give a varying number of points (from 0.5 to 4 points). These indicators significantly overlap with the ones from the 1st level triage and attract the same

amount of points, which means that ultimately the level of score and the difference between reports is made through the value of an STR and whether PEPs and cash (or similar assets) are identified. The STRs are sent for further operational analysis (10 analysts) only when a report receives 10 points. The NOPCML-FIU explained that the scoring which concentrates on PEPs and cash is mainly based on historically successful cases and the NRA has corroborated cash and corruption as the main vulnerabilities in Romania. When the grading system is considered (to get 10 points the STR needs to be connected to a significant value of money and potentially cash or a PEP) there could be significant number of high ML/TF risk reports that the current scoring system does not pick up. Those reports could be re-evaluated and re-scored if additional STRs regarding the same entities are filed.

258. Whilst the STRs and any attached files remain searchable in the folders of the dedicated file server, the manual insertion of information from the reports to the database of the NOPCML-FIU involves the risk of human error. Although the NOPCML-FIU has some automated data validation possibilities, the complicated and partially manual process does not guarantee that the data is identical.

259. As described above, STRs are not usually followed up and the NOPCML-FIU seldom contacts obliged entities for additional information. This limits the possibilities of following up a lead or performing an analysis beyond that of single transactions. (This was prevalent up until 2021 and is still a factor because STRs are not followed-up).

260. Since there are no statistics on the underlying predicate crimes, the AT is not able to confirm whether the information disseminated by the NOPCML-FIU is in line with the risk-profile of the country. The exception is corruption as a predicate offence to ML, where the authorities were able to present some positive cases of operational analysis.

261. As the AT was not provided with statistics on STRs where the suspicion is of TF, it is not able to assess which sectors of obliged entities are able to identify TF-related suspicions. Similarly, the AT was provided with no data about the further usage of TF-related case disseminations to the RIS and prosecutors' offices which would indicate the quality of such disseminations.

262. When the NOPCML-FIU identifies a suspicion of ML it immediately informs the POHCCJ. As noted above, threshold-based reports are not separately analysed. Those are considered as supplementary information in the STR analysis, but no statistics are collected about the numbers of threshold-based reports disseminated to the LEAs. In cases of TF suspicion, information is also disseminated to the RIS. In those cases where the NOPCML-FIU identifies offences other than ML/TF, it disseminates information to the LEAs. The NOPCML-FIU may also on its own initiative disseminate to other competent authorities (including supervisory authorities) in respect of issues relevant to their field (described further under cooperation).

263. Disseminated cases contain the description of the STR received from obliged entities, which is enriched with further analysis of transactions including from earlier information from different types of reports by obliged entities, cross-border cash declarations and different links and intelligence from the wide range of databases accessible to the NOPCML-FIU. The NOPCML-FIU also requests information from foreign FIUs where necessary and adds the received intelligence to the dissemination. The disseminations are well structured, allowing the recipients to navigate easily through their content. Before 2021, the majority of disseminations were about a single transaction or a few transactions and therefore not about complex cases. Since mid-2021, the number of ML/TF disseminations has significantly dropped, and a considerable amount of

NOPCML-FIU resources is spent on other miscellaneous tasks not related to the detection and analysis of ML/TF offences.

Case study 3.3: A complex ML investigation initiated by a STR from the consent regime

A bank suspended the transfer of EUR 30 000 from a Romanian company to the account in Bulgaria of a legal entity registered in the Seychelles and filed an STR on 16 July 2020. The STR indicated that the account of the Romanian company was used for transiting foreign payments with very general descriptions of the payment purposes and with the withdrawal of large amounts of funds from ATMs. The bank concluded that the company had no legitimate economic activity.

NOPCML-FIU analysts were able to corroborate the information from ETRs and CTRs and established that the Romanian company was recently established, had a registered office at a law office and was managed and owned by an Italian citizen. Based on several red flags typical of well-known ML typologies, the NOPCML-FIU suspended the transactions and reported the case to the POHCCJ on 17 July 2020. The investigation of the case is still pending.

264. There are also instances where information is provided to the LEAs based on their own request but only for intelligence purposes. Usually, the judicial police request information about private and legal entities under criminal investigation but also for requests to be made from other FIUs. The authorities, however, do not keep statistics on the numbers of and ratio between the various types of requests. The AT is therefore not able to assess whether the NOPCML-FIU only acts as a post-box between the LEAs and other FIUs or if and how it supports the operational needs of the LEAs more extensively. There are requests from the RIS, but the authorities say that the majority are concerned with national security rather than TF. Again, the limited resources of the NOPCML-FIU are used for purposes other than supporting, with financial intelligence, the investigation of ML/TF. The authorities have not provided information to the AT, whether, or to what extent, the NOPCML-FIU has been able to support the needs of the competent authorities in relation to TF.

Table 3.11: Number of requests received and responded to by the NOPCML-FIU from different authorities

| | 2017 | 2018 | 2019 | 2020 | 2021 | 30.06.2022 |
|--|------|------|------|------|------|------------|
| Responses to competent authorities | 195 | 152 | 155 | 110 | 114 | 91 |
| Responses to the RIS in connection to national security | 46 | 80 | 120 | 154 | 208 | 92 |

265. As can be seen from Table 3.12, there is an increase in the number of disseminations to different authorities in which the NOPCML-FIU has not identified a ML/TF suspicion or a suspicion of any other specified criminal offence. The AML/CFT Law adopted in 2019 provides that the NOPCML-FIU may on its own initiative submit information to the competent authorities or to the public institutions, on the non-compliance of the obliged entities as well as on issues relevant to their field of activity.

Table 3.12: Number of reports disseminated to the different authorities other than for ML/TF reasons or predicate offences

| | 2019 | 2020 | 2021 | 30.06.2022 |
|-------------------------------------|------|------|-------|------------|
| Other disseminations (Total) | 21 | 62 | 1 509 | 634 |
| Fiscal Administration* | 5 | 10 | 709 | 115 |
| Police* | 11 | 5 | 493 | 292 |
| POHCCJ and DIOCT* | 1 | 6 | 272 | 180 |
| NAD* | 2 | 2 | 19 | 28 |
| RIS* | 2 | 39 | 16 | 19 |

**From total number of other disseminations.*

266. In 2021 there was a significant increase in disseminations to different authorities which were not related to any criminal offences. The NOPCML-FIU provided examples of referred disseminations to the Fiscal Administration which contained information about the accounts of individuals being used for possible commercial activities and of significant cash withdrawals from the accounts of legal persons. Similarly, the above disseminations to the LEAs and prosecutors' offices resulted from STRs filed by obliged entities as a result of a prior request for information to them from LEAs and prosecutors' offices where the analysis of the NOPCML-FIU did not reveal any connection to ML/TF. The changes in the types of disseminations indicate that a significant proportion of the NOPCML-FIU's resources are not targeted in identifying (complex) ML/TF cases but are spent on minor matters which do not have any connection to ML/TF or other criminal offences. This raises questions about the level of analysis provided by, and the strategic priorities of the NOPCML-FIU.

Strategic analysis

267. The outcome of strategic analysis work, introduced by the AML/CFT Law in 2019, is several typology reports which provide indicators for the detection of suspicious activity, an analysis of cross-border transactions based on received ETRs and an analysis of cross border cash declarations in 2022. There is no sectorial analysis conducted by the NOPCML-FIU.

268. Access to different databases can be used for operational analysis, but there are no possibilities for larger enquiries which would be necessary to perform strategic analysis. Although it could be possible in some cases to obtain such data indirectly on written request, the strategic analysis of the NOPCML-FIU has not used external data sources. Analytical tools remain to be developed with MS Excel currently the main analysis tool.

269. Strategic analysis relies on received reports and disseminations of the NOPCML-FIU and is not enriched from external data sources. The limited use of information and limited human and technical resources leads the AT to conclude that the strategic analysis function is still underdeveloped and is in the early stages of creation. The strategic analysis function is therefore currently not supporting efficiently the needs of the NOPCML-FIU, prosecutors, competent authorities, or obliged entities.

3.2.4. Cooperation and exchange of information/financial intelligence

270. The NOPCML-FIU's cooperation with LEAs and prosecutors has limited operational elements. It is mainly in a written form – the NOPCML-FIU disseminates information, and the LEAs make inquiries. If information is exchanged, it is usually done by sending paper copies of documents via military courier. This is a secure channel for information exchange but affects the

timeliness of that information exchange. The AML/CFT Law provides the NOPCML-FIU with the legal basis for direct access to different databases of government agencies which are held on a secure network, providing for a higher degree of security.

271. There is a positive element in cooperation with competent authorities and other public institutions where the NOPCML-FIU notifies them about issues in their field of activity. A significant number of NOPCML-FIU disseminations are for miscellaneous reasons, including cases sent to the Fiscal Administration if the NOPCML-FIU sees large cash turnover but this may not be associated either with predicate offences or with ML/TF. Furthermore, the NOPCML-FIU must inform the registrars of BO and bank account information if they hold incorrect information. However, such exchanges of information significantly exceed the number of ML/TF disseminations and the number disseminations to the LEAs in relation to potential criminal offences which are not related to ML/TF. As those disseminations are not compulsory and on the initiative of the NOPCML-FIU, they do raise questions about the priorities being set by the senior management of the NOPCML-FIU as limited human resources are being depleted on activities not directly related to the identification and analysis of ML/TF related offences.

272. While the heads of authorities do meet regularly in different formats, such as to formulate and monitor different strategies (National Strategy Against Organized Crime 2021-2024, National Anti-Corruption Strategy for 2021–2025, National Strategy for Preventing and Countering Terrorism, etc.), the meetings are never held at an operational level. The NOPCML-FIU is not engaged as a member of the investigative team, even in the most complex cases, and is therefore unable to provide ongoing leads and intelligence. Operational co-operation relies solely on written requests and responses, therefore not utilising the full potential of the NOPCML-FIU to provide financial intelligence. To understand the needs of the authorities and ongoing investigations, the NOPCML-FIU has requested obliged entities to file an STR when a LEA requires information from them.

273. The only feedback the prosecutors and judicial police provide to the NOPCML-FIU on their own initiative is whether a criminal investigation was started or not, but never on the further development of the case. This means that the NOPCML-FIU does not receive feedback on the quality and usefulness of the specific dissemination and the LEA's expectations. Since 2018, the NOPCML-FIU has turned to the POHCCJ to ask for overall qualitative feedback about the cases disseminated to the prosecutors and the usefulness of financial intelligence. Despite the received feedback, disseminations by the NOPCML-FIU continued to be about single transactions or a few transactions until 2021, which were sufficient to initiate criminal cases, but those cases rarely reached the prosecution stage. A series of meetings in 2021 between the parties to align expectations lead the NOPCML-FIU to disseminate fewer cases but of higher quality and complexity. However, this has had another effect whereby the number of disseminated cases in which the NOPCML-FIU has identified suspicions of ML has decreased substantially to 20 disseminations in the first half of 2022.

274. The NOPCML-FIU has a good working cooperation with the NBR and the FSA. The authorities exchange information to enhance the supervision of obliged entities. The NOPCML-FIU provides an overview of the reports submitted, including as to quantity and quality which allows the NBR and the FSA to test during supervisory activities compliance with the reporting obligation and to enhance its quality. The NBR then files STRs in cases where it has discovered non-reporting. The NBR and the FSA highlight findings of supervisory activities so that the NOPCML-FIU can better understand the risk presented by specific obliged entities and therefore draw conclusions on the substance and quality of the reports received.

Overall conclusions on IO.6

275. The competent authorities have access to a broad range of financial intelligence and other relevant information and use it to some extent to enrich their investigations. The number of ML convictions in cases initiated by STRs is low. This is mainly because parallel investigations in some areas are not undertaken or not undertaken sufficiently effectively and the quality of STRs, the quality of the NOPCML-FIU's analysis and the timeliness of exchange of financial intelligence need further improvement.

276. The NOPCML-FIU receives STRs and other reports that, to some extent, contain relevant and accurate information which assists the NOPCML-FIU in performing its duties. Further improvements are needed to make the intelligence more accessible to the NOPCML-FIU analysts. There is limited proactive outreach to improve the quality of financial intelligence both from the NOPCML-FIU to obliged entities and from prosecutors and LEAs to the NOPCML-FIU.

277. The NOPCML-FIU disseminations support the operational needs of LEAs only to some extent as cases rarely reach the prosecution stage. Since mid-2021, the number of disseminations to the judicial authorities has dropped due to the NOPCML-FIU's focus on detecting, analysing and disseminating more recent and complex cases. The NOPCML-FIU has spontaneously disseminated a considerable number of cases to foreign counterparts during the whole assessment period.

278. There are some positive elements in the NOPCML-FIU's cooperation with competent authorities and public institutions and its notification to them of issues in their field of activity. The NOPCML-FIU has a good working cooperation with the NBR and the FSA. The authorities exchange information to enhance the supervision of obliged entities. NOPCML-FIU cooperation with the LEAs and prosecutors is limited to the exchange of information mostly in a written format.

279. **Romania is rated as having a moderate level of effectiveness for IO.6.**

3.3. Immediate Outcome 7 (ML investigation and prosecution)

280. Romania does not maintain comprehensive statistics on ML investigations, prosecutions, and convictions. The AT's findings are essentially based on the limited statistics provided in the NRA, the selected case examples provided and interviews with the LEAs, prosecutors and judges.

3.3.1. ML identification and investigation

281. Romania has a comprehensive legal and institutional framework to investigate and prosecute ML but the effectiveness overall is low as some fundamental improvements are needed. Where ML is investigated it is usually in conjunction with the predicate offence but there are sometimes standalone ML prosecutions which can result in a conviction. The NRA estimated that 1% of all ML convictions are from standalone prosecutions. Taking the jurisdiction as a whole, there are not sufficient numbers of specialized financial investigators and specialized judicial police officers in Romania. There is a need for further training and specialization of the judicial police bodies in parallel financial investigations given the diversity of ML mechanisms, the number and complexity of cases encountered, and the difficulties involved in obtaining evidence. Romania is currently ill-equipped to deal with the laundering of foreign predicates with complex structures.

282. The authorities are directed by the various prosecutors' offices so far as ML investigations are concerned. Each type of prosecutors' office has specific areas of responsibility as described under R.30. The main prosecutorial bodies – whether specialised or not – and which investigate and prosecute ML sit under the umbrella of the POHJCC. The specialised prosecutors' offices are DIOCT and NAD.

283. The main structures that investigate ML within the Police are the Directorate for Investigating Economic Crime (DIEC) and the Directorate for Combating Organized Crime (DCOC). Any police officer may start a ML investigation. As soon as the investigation is registered with the prosecutors' office to be given a case number, a prosecutor is appointed. A prosecutor initiates criminal investigation based on the notification. The POHJCC also receives information distributed by the NOPCML-FIU (see IO.6). An investigation might be conducted entirely by the Police even though a prosecutor is appointed but it is far more likely that the prosecutor will direct the investigation.⁴¹

284. Table 3.13 sets out both the number of prosecutors and the number of financial investigators involved in or capable of investigating ML working at DIOCT, NAD, and the POHJCC. Table 3.14 sets out the number of police officers and financial investigators involved in or capable of investigating ML working at the DIEC and DCOC at the time of the onsite visit.

Table 3.13: Number of prosecutors and financial investigators involved in or capable of investigating ML in NAD, DIOCT and POHJCC

| | NAD | DIOCT | POHJCC ⁴² |
|--|--------|-------|----------------------|
| Number of prosecutors | 90-100 | 257 | 125 |
| Number of financial investigators | 19 | 43 | 196 |

Table 3.14: Number of police officers and financial investigators involved in or capable of investigating ML in DIEC and DCOC

| | DIEC | DCOC |
|--|------|------|
| Number of police officers | 700 | 75 |
| Number of financial investigators | 350 | 40 |

285. Whether a prosecutor or a financial investigator, these are the figures for those who may work on ML cases but not necessarily exclusively on ML cases. All prosecutors within NAD who conduct investigations into predicates covered by NAD are also specialized in ML cases. The same would not necessarily apply at DIOCT given that the predicates are not exclusively financial in nature (although each predicate will have a financial element if it generates criminal property.) At POHCCJ and ordinary subordinated POs (national level) there are approximately 125 prosecutors working on ML cases (approximately 90 prosecutors attached to tribunals, 30

⁴¹ The CPC does not regulate a pre-investigative stage but requires the prosecutor to order the starting of the criminal proceedings *in rem* (with regards to the fact) based on the notification document (without a pre-investigative stage), if the notification document meets the conditions provided by the law (including the description of the offence). This act signifies the start of the investigative stage, i.e., the criminal investigation. When the notification document meets the conditions stipulated by the law, the criminal investigation body orders the initiation of criminal prosecution regarding the act committed or whose commission is being prepared, even if the author is indicated or known (CPC, Art. 305(1)).

⁴² Number includes ordinary subordinated POs (national level).

attached to courts of appeal and 5 prosecutors at the POHCCJ). A *Department of Financial Investigations* was set up within NAD prior to 2017, with 3-5 police officers specialized in financial investigations working at the central level. In 2021, this Department was renamed the *Financial Information and Investigations Office*. It is intended that this Office be further resourced (1 head of office and 9 police officers) to increase the support provided to NAD prosecutors. Currently, in this new unit 5 specialized police officers work there (there is a police officer working for each of the territorial services of NAD (a total of 15 services) in charge of identifying and seizing the assets). NAD also has a department named *Service for Specialists* consisting of (currently 47) specialists in financial and fraud analyses. DIOCT has 43 financial investigators. POHJCC has 196 fiscal specialists (8 at POHCCJ and 188 at POs attached to the courts of appeal and tribunals) supporting the prosecutor in financial investigations but they are described as fiscal specialists rather than as financial investigators as such.

286. The NRA sets out the practitioners' view that parallel financial investigations into the proceeds of crime are not pursued in 30-40% of cases at NAD level, 70% of cases at DIOCT level and (a very wide estimate of) between 5 and 80% of cases in non-specialized prosecution units (mainly 5-30%). The situation across the country is uneven, due to variations in the lack of specialized human resources. The NRA also notes that parallel financial investigations are not initiated in a timely manner and that the lack of specialized and trained prosecutors and judges to deal with ML cases is a major obstacle in the successful prosecution of such cases and is one of the main reasons for the low number of convictions for ML.

287. The limited statistics and case examples which have been provided and the variation in the responses of the authorities interviewed revealed a disparity between the main prosecution offices in terms of the approach adopted and their corresponding effectiveness in conducting ML investigations/prosecutions. Investigations and prosecutions into the laundering of tax predicates (DIOCT) and the laundering of the proceeds of corruption (NAD) are adequately resourced and effectively conducted. Investigations and prosecutions into the trafficking of human beings and drugs (DIOCT) tend to focus on the predicate crimes rather than the laundering of those predicates. Those interviewed from DIOCT and non-specialized prosecution units expressed the view that they would benefit from greater specialised resources and training in respect of ML given the number and complexity of cases, the diversity of ML mechanisms and the difficulty of gathering evidence. In particular, more guidance is needed in carrying out standalone ML investigations and prosecutions as well as in dealing with the laundering of foreign predicates with complex structures.

288. Combatting ML and the importance of asset recovery was identified as one (of many) objectives (covering a range of crimes) for all prosecutors in the activity reports of the Public Ministry for each year of the reference period. Although there is an expressed commitment to combatting ML and TF in the National Defence Strategy (2020 to 2024) and although this is supported by strategies on human trafficking (2018-2022,) organised crime (2021 to 2024,) corruption (2021 to 2025) and a drugs strategy (2022-2026), significantly there is no overarching National AML/CFT strategy ensuring a consistent approach and methodology in AML/CFT across all areas. There is therefore no strategy, policy, requirement, or detailed guidance in respect of the need for investigations into the core criminal proceeds generating predicates to be accompanied by a parallel ML investigation. Some types of predicates are reliably accompanied by a parallel ML investigation; other types of predicate investigation routinely are not.

289. Romanian Law does not criminalise all types of self-laundering: the acquisition, possession, or use of the criminal property by the predicate criminal is not a ML offence because acquisition and possession are “*factual situations inevitably resulting from the commission of the [predicate] offence*” and usage “*does not in itself presuppose the existence of a new criminal resolution*” (see R.3)

290. Although no statistics were presented establishing the decline in the number of self-laundering investigations and prosecutions, the authorities report that they do not pursue as many self ML prosecutions as they did before the constitutional court’s decision on self-laundering which restricted the scenarios in which self-laundering would be classified as a criminal offence separate from the predicate crime: where the predicate tax offender is self ML, the mere payment of a fictitious invoice, the withdrawal of cash and the return of the money to the real beneficiary, without separate concealment operations, constitutes merely a fictitious operation falling within the scope of the tax evasion offence and would not now be considered ML. ML requires that the proceeds of the alleged offence be subject to concealment and this must be distinct from the acts which constituted the material element of the principal predicate offence. Similarly, with, for example, self ML in a corruption case involving a bribe: ML may only be charged in addition to any corruption offences if the ML is not considered to be that type of self-laundering which is part of the constituent element of the predicate offence (e.g., it must be distinguishable from the act of obtaining a bribe). Although not all types of self ML are criminalised and although the authorities reported that the constitutional court’s decision has had an impact on whether they would pursue a ML investigation/ prosecution for self ML, the authorities also reported that self ML is far more likely to be investigated and prosecuted than third-party ML or standalone ML.

291. There is no mechanism for prioritising ML cases or certain types of ML cases across the various authorities. Certain authorities do prioritise ML (NAD). Others may investigate it but not in every case where an investigation is merited and, in many cases, not through to prosecution (DIOCT). Investigations into tax evasion have been resourced using Fiscal Administration specialists seconded to prosecutors’ offices. It is expected that an investigation into (particularly domestic) tax fraud or corruption will involve tracing the funds taken in the fraud or obtained by way of corruption. There is a focus on ML where the predicate crime is itself a financial crime and a downplaying of the ML aspect where the proceeds’ generating crime is not itself financial in nature — such as drug trafficking and human trafficking.

292. There are no statistics as to how many or what proportion of ML investigations are triggered by a STR or other reports reported to the NOPCML-FIU with an onward disclosure from the NOPCML-FIU to the Prosecution Office, how many or what proportion of ML investigations originate in an MLA request and how many or what proportion of ML investigations result from financial investigations conducted in parallel with the investigation into the predicate offence. The rough estimate given by the prosecuting authorities, with which the NOPCML-FIU concurred, is that less than 10% of convictions arise where the investigation is initiated by STR. Incoming MLA requests are not treated as a resource giving rise to ML/TF investigative opportunities and there is no policy or strategy suggesting that they should be. The authorities do pursue the ML of domestic financial predicates but the laundering of other domestic predicates or the laundering in Romania of the proceeds of crimes committed outside Romania is likely to remain undetected. These are serious shortcomings in the system, given Romania’s context.

293. NAD and those investigators it directs have the capacity to and do conduct ML investigations in parallel with investigations into corrupt predicates which are its remit.

294. DIOCT and those investigators it directs do not always conduct ML investigations in parallel with those predicates it is tasked with investigating. DIOCT contended that inevitably they prioritised certain cases and in those they conducted investigations in parallel with the investigation into the predicate crime. DIOCT appreciated that many more parallel investigations could be undertaken than was the position at present. They understood the need to address this issue and sought additional trained investigators to do so. There was, they contended, a capacity issue.

295. There were no statistics provided on the average length of ML cases, from the beginning of an investigation, charge, conviction, sentence. Questions were asked to try and establish representative rates of progression in different types of cases and of any problems or blockages in the system (if any). If there is to be a trial of the predicate offence and a trial for the ML offence, they will be invariably tried together by the Court. If one defendant pleads guilty, he may well be dealt with more quickly and separately. The observation was made that simple ML cases could be concluded in a year, but many take much more than that. In the case examples provided to the AT (which may well be the more complex cases) there are a number of years between the beginning of the investigation and the sentencing of the defendant and, as anticipated, complex cases will take longer to prepare.

296. Insufficient communication, cooperation and systematic coordination was demonstrated between the various prosecutors' offices in putting together an integrated set of statistics to best demonstrate effectiveness for this evaluation. Inevitably there will be missed opportunities in the detection and investigation of ML where there are shortcomings in the integration of the prosecution system overall. One view advanced by some at the onsite is that there is little co-operation between prosecutors' offices because none is really needed; each has different remits, different areas of competence. If there was overlap in an investigation the authorities suggested there could be co-operation. That said, complex ML cases may fall to be investigated by a prosecutor's office which is not best equipped to deal with it and the rigidity in the system determining allocation means that it cannot go to the prosecutor's office which would have more expertise to deal with it.

297. There are Joint Investigation Team agreements signed with EU and non-EU countries.

3.3.2. Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies

298. Romania's ML investigations and prosecutions are only partly in line with Romania's threats and risk profile. Romania does investigate the laundering of the proceeds of tax and corruption predicates and other financial crimes — particularly if they are domestic in origin. There are understandable difficulties in the investigation and prosecution of cybercrime predicates. The most serious shortcoming is in the investigation of the ML of the proceeds of drug trafficking and human trafficking. DIOCT contended that Romanian drug dealers or human traffickers were small in scale and simply kept rather than laundered the benefit from such trade. Another argument advanced was that any criminal property generated by Romanians outside the jurisdiction would be highly unlikely to be repatriated and laundered in Romania. The AT was not persuaded that these factors would apply in the vast majority of cases and account for the number of ML investigations/prosecutions/convictions associated with these predicates – although it may well be the case that the perceptions held may contribute to decisions not to deploy limited DIOCT or prosecutorial resources into such parallel investigations. There are thus several reasons for the shortfall. Given there is no policy addressing the fact that because trafficking in drugs and

human beings are significant threats, ML investigations run in parallel with investigations into these particular predicates need to be prioritised; the absence of any such policy means that there is no corresponding deployment of resources to put this into effect. Instead, the opposite occurs; for a number of reasons the laundering of drug predicates and human trafficking predicates are simply not investigated in sufficient numbers and therefore not prosecuted in sufficient numbers. This is a significant deficiency and not in line with Romania's risk profile.

299. Taking each of the main predicates in turn (and putting to one side the large number of (minor) offences of theft) the most prevalent predicate offences detected in Romania are as follows: (i) tax evasion; (ii) corruption; (iii) human trafficking; (iv) cyber-crimes; (v) smuggling; (vi) drug trafficking; and (vii) environmental crime. In the case of human trafficking, cyber-crimes and drug trafficking, if a significant part of the criminal activity is committed abroad, with illicit funds being transferred to Romania, this ML would be more difficult to detect and investigate. If the predicate occurs outside the jurisdiction, proof that the proceeds come from crime is more difficult to obtain.

300. The only coherent set of statistics for Romania as a whole in respect of the investigation and prosecution of ML cases (in which there has been at least one ML conviction in each of those cases) and its predicates is for the limited period 2018-2020 from NRA⁴³ (Table 3.15 below).

Table 3.15: Table showing the investigation, prosecution and conviction for ML and its predicates 2018-2020.

| Predicate Criminal offence | Cases to be resolved for this predicate (# of ongoing investigations) | Cases 'resolved' for this predicate without there being a charge | # CASES for this predicate for which Prosecuted or directing investigation (# of indictments) | # of Natural persons CHARGED with this predicate | # of Legal persons CHARGED with this predicate | # of Natural or Legal persons CONVICTED of these PREDICATES | # of #ML cases (which may have more than one defendant) in which there has been at least 1 final ML conviction |
|--|---|--|---|--|--|---|--|
| Corruption [not including petty corruption] | 23 487 | 9 040 | 709 | 1 275 | 93 | No figures provided | 21 |
| Tax evasion offenses | 59 281 | 16 335 | 2 054 | 3 628 | 289 | No figures provided | 68 |
| Embezzlement | 22 016 | 5 990 | 1 197 | 1 505 | 5 | No figures provided | 10 |
| Deception or "Fraud" | 197 825 | 48 609 | 2 034 | 3 718 | 63 | No figures provided | 13 |
| Offenses against EU funds | 5 691 | 2 067 | 271 | 406 | 63 | No figures provided | 3 |
| Cybercrime: Fraud via computer | 53 402 | 9 022 | 447 | 659 | 0 | No figures provided | 5 |

⁴³ NRA, pages 18, 20 and 21.

| | | | | | | | |
|---|-----------|---------|--------|--------|----|---------------------|---|
| systems and electronic means of payment | | | | | | | |
| Total human trafficking (adults & minors) & pimping but excluding migrant trafficking | 8 243 | 2 660 | 524 | 1 357 | 1 | No figures provided | 4 |
| Migrant trafficking | 1 942 | 748 | 192 | 392 | 1 | No figures provided | |
| Theft | 2 056 933 | 454 305 | 16 166 | 23 387 | 9 | No figures provided | |
| Drug trafficking | 52 093 | 20 661 | 3 420 | 5 756 | 1 | No figures provided | 1 |
| Crimes against the environment | 2 667 | 971 | 2.3 | 32 | 9 | No figures provided | |
| Offences provided by the Forestry Code | 75 374 | 16 351 | 1 188 | 1 871 | 10 | No figures provided | |
| Smuggling | 28 499 | 7 768 | 1 880 | 3 494 | 6 | No figures provided | |

301. This table is made up of the statistics provided in the NRA. No figures have been provided for how many of those charged were convicted of the predicate crimes listed. Because conviction figures for predicates are not given, it is not possible to compare the number of ML convictions of particular types of predicates with the number of predicate convictions in the same category. Similarly, no figures have been provided for the number of ML investigations (for the laundering of each of the main predicates) to compare to the number of investigations given for each of the main predicate crimes.

302. It is however immediately apparent that there is a concentration on the laundering of the proceeds of (predominantly but not exclusively domestic) financial crime: the proceeds of tax fraud, corruption, embezzlement, and fraud make up almost all the ML convictions over this 2018-2020 period. The authorities have not provided estimates of the percentage of parallel financial investigations conducted alongside investigations into each category of predicate offences.

303. The only further consolidated table provided which covers ML convictions prosecuted by any of the prosecuting authorities is set out below:

Table 3.15(a)⁴⁴: POHCCJ, NAD, DIOCT – Number of natural or legal persons convicted of ML during 2018-2020 and in respect of which predicate.

⁴⁴ Tables 3.15 a-e may present inconsistencies with the data set out in Table 3.15 which is taken from the NRA.

| The Predicate Criminal offence | Number of natural persons convicted of ML from these predicates | Number of legal persons convicted of ML from these predicates |
|---|---|---|
| Corruption | 39 | 7 |
| Tax evasion offenses | 114 | 6 |
| Embezzlement | 13 | 3 |
| Deception or "Fraud" | 12 | 1 |
| Offenses against EU funds | 4 | 2 |
| Cybercrime: Fraud via computer systems and electronic means of payment | 19 | 0 |
| Total human trafficking (adults & minors) & pimping but excluding migrant trafficking | 7 | 0 |
| Theft | 16 | 0 |
| Drug trafficking | 1 | 0 |

304. There are very few ML convictions over this period in respect of the laundering of some predicates – most notably drugs trafficking (one natural person) and human trafficking (seven natural persons).

305. NAD provided a break down of their cases for the 2018-2020 period:

Table 3.15(b): NAD – Number of natural or legal persons convicted of ML during 2018-2020 and in respect of which predicate.

| The predicate offence | Number of natural persons convicted for ML | Number of legal persons convicted for ML |
|---------------------------|--|--|
| Corruption | 39 | 7 |
| Tax evasion | 35 | 5 |
| Deception or Fraud | 2 | 1 |
| Offences against EU funds | 4 | 2 |
| | Total: 80 | Total: 15 |

306. The total number of natural or legal persons convicted of ML in NAD cases over the evaluation period is set out in the **Table 3.15(c)** NAD below. This Table does not break down how many ML convictions in each year were in respect of which predicate.

Table 3.15(c): NAD – ML convictions of defendants per year.

| Year | Number of ML conviction of defendants per year |
|-------------------------|--|
| 2017 | 78 |
| 2018 | 41 |
| 2019 | 33 |
| 2020 | 21 |
| 2021 | 26 |
| 2022 (until 31.08.2022) | 7 |

307. DIOCT produced its own **Table 3.15(d)** showing the number of ML investigations each year and the number of ML indictments each year over the review period and in respect of which predicates.

Table 3.15(d): DIOCT - ML investigations and the number of ML indictments per year and in respect of which predicate.

| Number of ML investigations per year 'pre-trial closed proceedings' | | In respect of which predicate | | | Number of ML indictments per year | | In respect of which predicate | | |
|---|----------|-------------------------------|------------|------------|-----------------------------------|-------------|-------------------------------|------------|-------------|
| Year | ML cases | Trafficking HB | CYBERCRIME | DRUG TRAF. | Year | ML Indictme | Trafficking HB | CYBERCRIME | DRUG. TRAF. |
| 2017 | 33 | 18 | 12 | 3 | 2017 | 16 | 8 | 7 | 1 |
| 2018 | 37 | 14 | 19 | 4 | 2018 | 16 | 6 | 8 | 2 |
| 2019 | 59 | 19 | 33 | 7 | 2019 | 29 | 12 | 12 | 5 |
| 2020 | 38 | 14 | 19 | 5 | 2020 | 19 | 13 | 4 | 2 |
| 2021 | 46 | 16 | 26 | 4 | 2021 | 20 | 11 | 6 | 3 |
| 30.09.2022 | 27 | 7 | 16 | 4 | 30.09.2022 | 14 | 6 | 4 | 4 |

308. It is immediately apparent that the table does not show how many of these cases in which there were ML indictments resulted in a ML conviction. The explanation given by authorities was that there were none or none yet. Authorities explained that no ML indictment of cases in the table – even where the defendant was indicted at the beginning of 2017 – would have been determined by September 2022.

309. As to whether evidence was provided of an equivalent table showing (for DIOCT) year on year ML convictions in respect of these predicate categories where the investigation had commenced or the indictment had been charged in any preceding year – even in years before the evaluation period—no equivalent table was provided. The only further Table from DIOCT that was provided was following:

Table 3.15(e): DIOCT - Number of convictions

| Year | Number of cases with final convictions for ML | Total number of natural and legal persons convicted of ML |
|--------------|---|---|
| 2017 | 28 | 100 |
| 2018 | 13 | 38 |
| 2019 | 14 | 22 |
| 2020 | 9 | 39 |
| 2021 | 11 | 25 |
| 30.06.2022 | 1 | 4 |
| TOTAL | 76 | 228 |

310. The Table above does not break down how many ML convictions in each year were in respect of which predicate. The Table that the AT relied upon is therefore that taken from the NRA, Table 3.15.

311. The estimated volume for the proceeds of crime in each predicate category investigated is not given but the totals for the amounts charged in each category are set out in Table 3.15 from the NRA:

Table 3.16: Table showing the total of the amounts in respect of those natural and legal persons charged with the following predicates 2018-2020.

| The Predicate Criminal offence | Natural persons charged with this predicate | Legal persons charged with this predicate | TOTAL amount in EUR charged for this predicate |
|--|--|--|---|
| Corruption (Law no. 78/2000) [not including petty corruption] | 1 275 | 93 | 441 257 444 |
| Tax evasion offences (Law no. 241/2005) | 3 628 | 289 | 651 460 139 |
| Embezzlement | 1 505 | 5 | 83 780 951 |
| Deception or “Fraud” | 3 718 | 63 | 66 739 076 |
| Offences against EU funds | 406 | 63 | 67 790 476 |
| Cybercrime: Fraud via computer systems and electronic means of payment | 659 | 0 | 86 549 658 |
| Total human trafficking (adults & minors) & pimping but excluding migrant trafficking | 1 357 | 1 | 11 240 715 |
| Migrant trafficking | 392 | 1 | 0 |
| Theft | 23,387 | 9 | 36 786 919 |
| Drug trafficking | 5 756 | 1 | 184 117 |
| Crimes against the environment | 32 | 9 | 30 248 |
| Offenses provided by the Forestry Code | 1 871 | 10 | 1 415 329 |
| Smuggling | 3 494 | 6 | 30 918 840 |

312. The figures in the table above and the detail in respect of them comes from the NRA. The most frequent convictions for the ML of tax predicates are in sectors such as petroleum products, agriculture, environment (waste management), construction and other commercial activities. There were 68 cases (all involving bank transfers amounting to EUR 100 435 328). In 57 of those 68 cases the ML was committed through shell companies (money transfers through bank accounts amounting to EUR 98 691 028). Funds were withdrawn in cash in 52 cases (EUR 85 733 462) and, in one case, a bank deposit of EUR 7 500 000 was made. Money was transferred mainly within Romania (60 cases, EUR 78 653 507) but occasionally out of Romania (5 cases, EUR 14 275 321) and in one case, foreign exchange of EUR 556 000 was found.

313. The ML of tax predicates was mainly by Romanian residents (EUR 78 902 007), but sometimes by non-residents (3 cases, in total, EUR 9 065 321), resident legal persons (EUR 12 000 000) and resident PEPs (EUR 180 000).

314. The authorities remark that where OCGs are involved there can be a transnational component involving shell companies and offshore legal entities.

315. The corruption cases that resulted in final ML convictions during 2018-2020 Romanian public officials as Romanian companies — together with non-Romanian residents. ML offences were committed by public officials (4 cases, EUR 5 708 822 amount), PEP residents (4 cases, EUR 1 275 000), resident individuals (2 cases, EUR 502 500), non-resident individuals (1 case, EUR 144 401 569) and resident legal entities (1 case, EUR 40 000). Common scenarios in corruption cases were trafficking in influence and overpricing in matters of public procurement.

Case study 3.4: Conviction for the ML of predicate of embezzlement, involving: OGC, shell companies, legal person, professional advisors, fake purchase contracts, real estate, freezing and confiscating the criminal proceeds.

Between July 2008 and June 2009 members of an OCG, including the company's director and shareholder, decided to embezzle money out of an IT company and then launder the proceeds. The company's administrator used the advice provided by a lawyer specialising in commercial litigation and a consultant in tax and offshore companies.

Companies were incorporated abroad (Delaware, Seychelles, Cyprus) for the purpose of playing the role of fictitious buyers of IT equipment under the control of the OCG's members. These fake purchases generated fake 'debts' which were then ceded to another Romanian company which recovered the payments of these 'debts' in the form of real estate from the victim company. The real estate was ultimately transferred to a further Romanian company where it was exploited through rental contracts.

The criminal investigation began in June 2013 based on information gathered by police officers. The court proceedings at first instance took place before Bucharest Court of Appeal between 2015 and 2019 and the final decision at the High Court of Cassation and Justice in October 2019.

4 Defendants were convicted (embezzlement and ML) and one was acquitted of those charges: the administrator and the tax consultant both received 2 years in prison for ML; the lawyer and his employee who both pleaded guilty were both sentenced to 1 year and 6 months in prison for ML; and the legal person which was ordered to be dissolved was sentenced to pay RON 18 000 (approximately EUR 3 545) for ML.

The prosecutors froze the monthly rental payments and seized the real estate property (proceeds of crime), which were all confiscated by the court, as the company was dissolved at the time the final court decision was delivered.

316. The sanctions in the case above seem low, given the professional nature of the ML.

Case study 3.5: Conviction for the ML of predicate of corruption

Between 2009-2011, a defendant, a person with no special status, claimed and received, in several instalments, EUR 9 000 000 from two people to intercede with a former Minister, as well as with others in the Romanian Government, to guarantee that companies supported by the witnesses were awarded a contract for the rental of educational products.

In the second half of 2014, while the investigation was carried out concerning the above-mentioned aspects, knowing that the amount of EUR 500 000 he received in his personal account in 2011 represented a part of the above-mentioned amount of EUR 9 000 000, and to create an appearance of legality, the defendant concealed the true nature of its origin by concluding a fictitious loan agreement with one of the witnesses.

The defendant was initially sent to trial on charges of influence peddling, and after his conviction and being sentenced to 2 years and 4 months, he was sent to trial for ML, convicted and sentenced to 1 year imprisonment. Because part of this sentence ran concurrently with the sentence for the predicate offence, the total sentence served was 2 years and 8 months in prison (Criminal decision no. 1470/29.12.2021 of the Bucharest Court- Criminal Section I).

317. The problem revealed by the figures in Table 3.15 above showing the number of investigations, prosecutions and the number of cases (in which there was at least one final ML conviction) for ML and its predicates 2018-2020 is that there are deficiencies in the investigation and prosecution of the laundering of the proceeds of cybercrime, human trafficking, and drug trafficking. There are some investigations and prosecutions in each of these areas (cases in which there was at least one final ML conviction): cybercrime (5), human trafficking (4), and drug trafficking (1)) and for which case examples are given below but not as many as might be expected.

318. Each presents its own challenges. Cybercrime (for example, phishing, malware attacks, online auction fraud, e-commerce fraud, business email compromise (BEC), online fraud, booking fraud etc.) whether committed within Romania or by Romanian citizens outside the jurisdiction was spoken of by the authorities as being a growing area. In the period 2018-2020, a total of 659 individuals were prosecuted for cybercrime, in 447 cases, for amounts totalling €87 million. Only 5 were convicted of ML the proceeds of cybercrime.

319. The authorities reported that those who are behind the laundering of these predicates are experienced and sophisticated in the techniques they use, are suspected of being members of OCGs and are rarely detected. Romanian cybercrime and the laundering of its predicates may well be controlled from outside as well as inside Romania and those involved are adept at masking their identity. Common laundering techniques include the use of 'money carts' the use of Romanian residents to open and operate bank accounts to make/ receive bank transfers or to move funds by MVTs or by cash with onward transfers often being made through successive other jurisdictions. Many jurisdictions are facing the same challenges when it comes to combatting cybercrime and the laundering of proceeds of cybercrime and the low number of ML convictions for cybercrime predicates could not be said to be unusual.

Case study 3.6: Conviction for the ML of proceeds of cybercrime, involving transnational OCG, predicates committed abroad,

Between 2013 - 2015, five Romanians (A, B, C, D and E) became members of a transnational OCG who laundered the proceeds of frauds committed by criminals operating outside Romania who had fraudulently obtained and used compromised banking applications for bank accounts opened in Romania, Germany, Austria, France, and Netherlands. The predicate crimes were not investigated to prosecution in the countries in which they took place.

A, B, C, D and E identified natural persons (X, Y, Z etc) who allowed their own bank accounts to be used for receiving the criminal property from the compromised accounts whether in Romania or Germany, Austria, France, and Netherlands.

The recipient account holders (X, Y, Z etc) then transferred the funds to other members of the OCG based in Ukraine, through Western Union and Money Gram.

The 5 Romanian defendants (A, B, C, D and E) were prosecuted and tried in 2016. The evidence against them consisted of wiretapping, and analysis of their computers and telephones.

All 5 defendants were convicted of in 2019 of ML and sentenced to between 2 and 3 years with other penalties imposed for the cyber-crime element. All sentences were suspended, the reason being that these defendants had not offended previously.

Confiscation of the proceeds of crime was ordered in the sum of EUR 60 000 with restitution to the victims ordered in the sum of EUR 12 400.

320. The significant problems arise in the lack of convictions and probably the lack of significant investigations into the laundering of predicates from serious and prevalent crimes drug trafficking and human trafficking.

321. There is only one ML conviction of the proceeds of drug trafficking over the period 2018-2020. The AT did not accept some of the points advanced. A relatively large country with a population size of 19 million people will have a significant amount of domestic drug trafficking which is extremely profitable. The laundering of those profits is not being prosecuted. The organised transportation of cocaine and heroin from east to west and to a lesser extent of synthetic drugs from west to east involving Romanian individuals and OCGs working with foreign OCGs also will involve significant profits to be laundered. The amounts and values of drugs transported can be enormous. A seizure of more than EUR 100 million of cocaine on the Black Sea; a seizure of 1.4 tons of heroin in one shipment were examples provided. It is symptomatic of the lack of prioritisation given to the investigation/prosecution of the laundering of drugs predicates that the figures provided do not distinguish between the possession of the unlawful drug as a user where there can be no laundering and the supply of drugs where (at least higher up the chain of supply) there will be.

Case study 3.7: Conviction for the ML of proceeds of drug trafficking

For 3 months in 2016, the defendant supplied heroin to customers in Bucharest.

The money from drug trafficking was invested in real estate and taxi licenses. Property was transferred to others to conceal it. Money found in several bank accounts in the defendant's name was seized. The defendant was convicted in 2018 and sentenced to 3 years and 4 months in prison of which 2 years and 6 months was for ML (the defendant's sentence was reduced because of his plea of guilty and other mitigation).

The court also confiscated (applying both special and extended confiscation) the total amount of EUR 111 050 and RON 320 700.

322. Trafficking in human beings, including children, whether for sexual or some other form of exploitation is a grave crime and the laundering of those proceeds which are likely to be substantial is not pursued effectively. There are only 4 ML cases in respect of the laundering of the proceeds of human trafficking over the same period.

Case study 3.8: Conviction for the ML of proceeds of the trafficking of human beings.

Between 2014 - 2017, the defendant recruited two underage Romanian girls by pretending to be their boyfriend and by falsely promising legitimate employment. The girls were transported and then forced into prostitution in Germany, Finland, and Spain. The victims were being recruited under false job promises and through the "Lover Boy" method.

The defendant laundered EUR 62 500 by transferring it into his father's name to purchase real estate.

In 2017 DIOCT prosecuted the suspect for trafficking of human beings and ML. The suspect was convicted and sentenced to 8 years and 2 months, of which 3 years was imposed for ML, in prison. The court also ordered the confiscation of EUR 40 000.

323. The number of cases is low. The essential problem seems to be that where there are transnational crimes there is a reluctance to resource and engage in a transnational parallel ML investigation through to an effective prosecution. The AT did not accept that criminal property

generated by Romanians outside the jurisdiction would be highly unlikely to be repatriated and laundered in Romania.

324. DIOCT handles the investigation and prosecution of drug trafficking and human trafficking. Those members of DIOCT had an understanding of the issues involved and appreciated the need to conduct such parallel ML investigations. Their focus tends to be on the predicate offence. It was reported to the AT that the justice police officers acting on the DIOCT prosecutor's direction may well not have the required training in conducting a financial crime investigation.

3.3.3. Types of ML cases pursued

325. Romania was not able to provide detailed statistics on the types of ML cases being pursued. The AT based its findings on case studies presented by Romania and interviews with prosecutorial authorities and LEAs.

326. *Self-laundering*: The Romanian authorities indicated that (with very few exceptions) they only prosecute self-laundering. Some (but not all) types of self-laundering are criminalised (see R.3). Following the Constitutional Court's decision, Art.49(1)(c) of the AML/CFT Law excludes predicate offenders (whether as author, accomplice or abettor) from being prosecuted as self-launderers; the condition being that the acquisition, possession, or use of property must be "*by a person other than the active subject of the offence from which the property derives [i.e., originates]*"⁴⁵. The prosecutors interviewed about this decision reported that it had had little impact and, in those cases, where a self-ML charge was not possible, then extended confiscation was applied.

327. *Standalone and third party ML*: Third party ML is rarely investigated, and standalone ML prosecutions are rarer still. This is not only because standalone cases are more difficult to prosecute; it arises from the structural problem that some prosecuting authorities and LEAs are only permitted to investigate ML if the investigation of that type of predicate falls within their remit and cases where the predicate is not identifiable are outside the remit of the more specialised prosecutors' offices — DIOCT and NAD — who would have the financial skills and resources to investigate and prosecute these more difficult cases. This has the result that the more difficult standalone cases with unidentified predicates are referred to the prosecutors' offices attached to the tribunals which are least equipped in terms of experience and resources to deal with them.

328. *Complex ML cases and foreign predicate offences*: (for example, involving the use of legal persons to obscure ownership, cases with transnational elements, cases where predicate offence is unknown etc.): although some case examples were provided involving the use of legal persons to obscure ownership in ML cases, the AT was not persuaded that competent authorities are pursuing prosecutions in all such cases, especially with transnational elements (e.g., predicate committed abroad) requiring identification of illicit funds.

329. A case where it would be possible to prove from objective factual circumstances that the property is illicit (but the predicate crime itself or the type of crime were not identifiable) would not be likely to be pursued. There is a reluctance on the part of prosecutors to pursue such cases

⁴⁵ Art.1(5) and Art. 23 (12) of the Constitution (Constitutional Court Decision no. 418/2018). See Rec. 3 below.

and still a reluctance on the part of some judges to find, when presented with evidence objective factual circumstances, that the funds are illicit. In practice where there is a transnational element because of the high evidential standard required by the Romanian court, the Romanian prosecutor will leave it to the other jurisdiction to investigate and prosecute the ML

3.3.4. Effectiveness, proportionality and dissuasiveness of sanctions

330. No adequate statistics were provided by the authorities as a whole to show the range of sentences imposed and the principles underlying their application. The way in which statistics are recorded so far as sentences are concerned does not record separately the sentence for ML from any sentence for the predicate or other crime. A system which only records the total sentence imposed is of very limited use for any examination of how ML convictions are sanctioned.

331. In several of the case examples provided in self-laundering cases, the sentence imposed did not add materially to the sentence imposed for the predicate offence and could not be said to be dissuasive. In others the opposite point could be made. NAD provided 10 case examples giving the longest sentences imposed for the ML offence alone arising from a NAD prosecution over the review period. In these final decisions ranging from 2017-2020 (but in which the criminal offending was often from 6,7 or 8 years before) the sentences imposed were between 4 and 6 years.

Case study 3.9: Sanction applied for ML

Between 2011 and 2012, in order to ensure that the defendants (NR and NDM) would retain the proceeds of tax evasion, the defendants (CD and S.C. IJ S.R.L.) carried out repeated banking operations, transferring through CI Limited, USD 13 212 000 to an account in Dubai controlled by NR and NDM. These transactions were disguised as consultancy operations. Sentenced to 6 years for ML. The defendant CD was convicted by final decision on 15.04.2019 for ML with 6 years imprisonment by the High Court of Cassation and Justice Criminal decision.

332. It could not be determined from the statistics provided (showing the number of prison sentences per year and the average length of those sentences) whether and to what extent those average sentences were for ML or for the predicate offence or any other crime. For this reason, it has not been demonstrated from the statistics provided whether the sanctions applied against natural or legal persons convicted of ML offences are effective, proportionate, and dissuasive. That said, in some of the case examples provided, sentences of between 4 and 6 years were imposed for that part of the overall sentence which was for ML. A sentence of between 4 and 6 years could be said to be effective, proportionate, and dissuasive.

Penalties imposed for ML (legal persons)

333. Data on penalties imposed for ML as provided by DIOCT, POHCCJ and NAD demonstrates that sanctions imposed in POHCCJ and DIOCT cases on legal persons were rare while in NAD cases sanctions against legal persons for ML were more commonly applied and may have a dissuasive effect.

Table 3.17: Penalties imposed for ML (legal persons) by DIOCT

| Types of sanctions | 2017 | 2018 | 2019 | 2020 | 2021 | 30.06.2022 |
|---|--------|------|-----------|------|------|------------|
| Number of cases | 1 | - | 1 | - | - | - |
| Imposed fines (EUR) | 34 666 | - | 7 643 | - | - | - |
| Company liquidation | 3 | - | 2 | - | - | - |
| Denial of the right to carry out activities | - | - | - | - | - | - |
| Confiscation (EUR) | - | - | 3 454 512 | - | - | - |

Table 3.18: Penalties imposed for ML (legal persons) by POHCCJ

| Types of penalties | 2015 | 2016 | 2017 | 2018 | 2019 |
|--|------|------|------|--------|---------|
| Number of cases | - | - | - | 2 | 7 |
| Level of fine imposed (in EUR) | - | - | - | 40 460 | 161 840 |
| Liquidation | - | - | - | - | - |
| Deprivation of right to carry out activities | - | - | - | - | - |
| Confiscation | - | - | - | - | - |

Table 3.19. Penalties imposed for ML (legal persons) by NAD

| Types of sanctions | 2015 | 2016 | 2017 | 2018 | 2019 |
|---|---------|-------------------------------------|--------------------------------------|-------------------------------------|-------------------------------------|
| Number of cases | 1 | 2 cases (9 legal persons convicted) | 7 cases (18 legal persons convicted) | 4 cases (7 legal persons convicted) | 3 cases (5 legal persons convicted) |
| Imposed fines (EUR) | 121 738 | 193 766 | 546 836 | 73 995 | 369 978 |
| Company liquidation | 1 | 9 | 18 | 7 | 5 |
| Denial of the right to carry out activities | 1 | 09 | 18 | 7 | 5 |
| Confiscation (EUR) | - | 907 186 | 1 442 409 | 918 714 | - |

3.3.5. Use of alternative measures

334. Romania does apply other criminal justice measures in cases where a ML investigation has been pursued such as confiscation of the proceeds of the predicate crime, but this does not constitute a justifiable reason for not pursuing or securing ML convictions in certain categories of cases.

335. The prosecuting authorities contended that they did prosecute self-ML where such conduct was still criminalised and used extended confiscation where it was no longer criminalised. (See R.3 for the distinction between the two).

Case study 3.10: Extended confiscation

In 2015, 9 defendants in an organized criminal group stole EUR 431 260 from companies in Italy and Romania. The predicate crime and the laundering of its proceeds were investigated. The Defendants had bought several luxury cars in their own names. No ML was prosecuted but the cars, money found in a search and a house were seized. All 9 defendants were convicted of theft. The court ordered the extended confiscation of some of the assets seized during the investigation, according to Article 112(1) of the CC.

Overall conclusions on IO.7

336. Romania's legal system has AML/CFT legislation which covers the criteria required by the standards. The successful investigation and prosecution of ML cases is restricted by various elements. Although investigations and prosecutions into the laundering of tax predicates and the laundering of the proceeds of corruption are effectively conducted, investigations and prosecutions into the trafficking of human beings and drugs focus on the predicate crimes rather than the laundering of those predicates.

337. The lack of a national AML/CFT strategy is one of several reasons why there is an inconsistency in approach to investigating and prosecuting ML. The investigation and prosecution of ML is not pursued as a priority overall. Insufficient communication, cooperation and systematic coordination was demonstrated between the various prosecutors' offices. Some types of predicates are reliably accompanied by a parallel ML investigation; other types of predicate investigation routinely are not. For some key areas, the ML offences investigated and prosecuted therefore do not appear commensurate with the identified ML risks of the country.

338. The Romanian authorities tend to concentrate on self-laundering. There are very few third party ML cases and standalone ML prosecutions are rarer still. Some prosecuting authorities and LEAs are only permitted to investigate ML if the investigation of that type of predicate falls within their remit. A case where it would be possible to prove from objective factual circumstances that the property is illicit (but the predicate crime itself or the type of crime were not identifiable) would not be pursued.

339. Taken overall the authorities have not demonstrated that the number of ML investigations and convictions in Romania is anything other than low when compared to the number of proceeds-generating offenders investigated.

340. When there are convictions for ML, the sanctions applied by the Court for the ML offence sometimes seemed low and not dissuasive.

341. **Romania has achieved a moderate level of effectiveness for Immediate Outcome 7.**

3.4. Immediate Outcome 8 (Confiscation)

342. The AT based its findings on limited statistics, strategic documents and other information provided by the authorities as well as on interviews with NOPCML-FIU, NGA, the Border Police, Judicial Police, prosecutors and other competent authorities

3.4.1. Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective

343. The confiscation of criminal proceeds, instrumentalities and property of equivalent value is pursued as a policy objective to some extent in Romania. There is a high-level strategy in place for asset recovery and the amounts seized and confiscated overall are moderate/high but prosecutors would benefit from more practical guidance in targeting the proceeds and instrumentalities of crime, in particular the criminal property which is generated by the more profitable form of crime and those proceeds that do not originate domestically or have flowed overseas. A shortage of financial investigators also hampers the confiscation of criminal proceeds as discussed below.

344. Romania has adopted a *National Asset Recovery Strategy 2021-2025 (National Asset Recovery Strategy)* which sets out the relevant legal provisions and the objectives (for the judicial authorities and the administrative institutions with supporting functions) to apply, in an effort to ensure that they act in an integrated manner from the commencement of criminal proceedings until their conclusion; the aim being that criminal property is identified, seized, valued, recovered effectively and managed properly. The *National Asset Recovery Strategy* was drafted by NAMSA, promoted by the MoJ and adopted by the Government. It is a horizontal policy which applies to all stakeholders and for all sectorial strategies (anticorruption, organised crime, etc).

345. It is commendable that the *National Asset Recovery Strategy* identifies vulnerabilities in the confiscation regime and seeks to address them through an adopted *Action Plan*. For example, the Action Plan proposes measures to: (i) improve the legislative framework in relation to selling seized real estate prior to a criminal conviction and proposes different measures to support the judicial authorities in asset recovery; (ii) increase the personnel at both the central and territorial level of the judicial police with responsibilities for financial investigations; (iii) deliver professional training programs for the authorities and institutions involved in the asset recovery process; etc.

346. The establishment of NAMSA in 2015 was an important milestone for Romania and it has demonstrated impressive results within the short period of time of its operation (see below). NAMSA ensures an integrated approach to asset recovery by combining support for prosecution agencies in the fields of international cooperation, the management of seized assets and the social application of confiscated assets. One of the NAMSA's functions is the facilitation of the tracing and identification of criminal assets and other property potentially subject to seizure or confiscation. Some of NAMSA's main objectives are to ensure an increase in the number of confiscation orders made in criminal cases and to improve the efficiency of the management of seized assets. NAMSA is also the designated Asset Recovery Office, responsible for the tracing and the identification of proceeds from or other property related to crime and for cooperation between the Asset Recovery Offices of EU Member States. NAMSA's work is supported by various global and regional networks such as CARIN, Interpol and international legal instruments such as UN Convention against Corruption (UNCAC) and can reach approximately 170 jurisdictions for tracing criminal assets.

347. From the interviews conducted during the onsite there appeared to be insufficient practical guidance given to prosecutors across the various prosecution offices. The prosecutors highlighted that they would benefit from further guidance and training to improve the seizure and confiscation of assets in complex cases of major proceeds-generating/serious crimes, including those that do not originate domestically or where the criminal property has flowed

abroad. The need for additional personnel at the central and territorial level of the judicial police with responsibilities for financial investigations was also frequently mentioned at the onsite interviews as well. It was noted that there is no integrated system for recording data in respect of criminal assets, and such a system is currently under development.⁴⁶

3.4.2. Confiscation of proceeds from foreign and domestic predicates, and proceeds located abroad

348. Overall, the amounts of seized and confiscated assets are moderate/high. The focus of the Romanian competent authorities (see R.4 and R.30) is mainly on the confiscation of the proceeds of certain types of domestic predicates from within Romania but the confiscation of the proceeds of foreign predicates entering Romania and the proceeds of domestic predicates which are moved abroad are very rarely pursued.

349. Taking the figures for Romania overall (see the tables below), limited figures were provided. No statistics were provided of the number of convictions in the various categories of predicates (see IO.7) that could be compared to the number of cases and amounts of confiscated assets on an annual basis over the review period. There are no details of the different categories of crimes where there has been repatriation, sharing or restitution involving domestic and foreign predicate offences or of cases where the proceeds have been moved to other countries. However, the figures below (Precautionary Measures Ordered by Indictments and Plea agreements related to ML Criminal Files) demonstrate that the authorities (DIOCT, POHCCJ and NAD) are applying precautionary measures⁴⁷; the overall amounts for each authority each year are usually moderate but, in some instances, high (especially for NAD).

350. **Table 3.20:** Precautionary Measures Ordered by Indictments and Plea agreements related to ML Criminal Files

| Year of Arraignment | Value of Precautionary Measures (EUR) | | |
|---------------------|---------------------------------------|------------|-------------|
| | DIOCT | POHCCJ | NAD** |
| 2017 | 15 800 330 | 32 505 471 | 202 400 000 |
| 2018 | 18 706 739 | 57 897 276 | 400 100 000 |
| 2019 | 3 640 530 | 29 119 500 | 224 000 000 |
| 2020 | 3 210 840 | 53 830 227 | 137 500 000 |
| 2021 | 1 795 861 | 18 720 245 | 127 900 000 |
| 30/06/2022 | 39 559 621 | 99 267 733 | 53 860 000 |

** *The value of the ensuring measures ordered for the special confiscation, or the recovery of the damage caused as result of the perpetration of the offence.*

351. Further statistics and explanations provided by NAD demonstrated that the total amounts of precautionary measures ordered in those cases before the court related to the following offences: (i) offences assimilated to those of corruption; (ii) offences against the financial

⁴⁶ According to the authorities the new IT system is currently being developed by NAMSA that will connect 40 000 users from all the judiciary police units, prosecutors' offices, courts and the administrative support units in NAMSA and the Fiscal Administration. It will integrate all the data on seizing and confiscation orders, including the possibility of tracking all seizing orders and generating standardised data and reports on asset recovery indicators, including the value of seized assets, crimes generating proceeds, national and international cases, etc.

⁴⁷ Precautionary measures consist in the freezing of movable or immovable property by imposing a seizure on them (CC, Art. 249(2)).

interests of the EU; (iii) ML; and (iv) other offences (ex. tax evasion, fraud, etc.). From the figures provided, it appears that, overall, the precautionary measures ordered by the court were applied equally in relatively high amounts for these offences – except for ML, where the amounts were slightly lower.

352. Additional figures and explanations were also provided by DIOCT on the type of offences where precautionary measures were applied and these were: (i) organized crime (including most serious offences); (ii) trafficking and exploitation of vulnerable people; (iii) migrant smuggling; (iv) forgery of currency; (iv) drug crimes (including illegal trafficking and consumption); (v) tax evasion; (vi) smuggling; (vii) cybercrime (viii) ML (most serious offences), (ix) terrorism and national security, etc. The figures provided demonstrate that DIOCT applies precautionary measures for those cases sent to court for the most prevalent predicate offences (see Chapter 1). No further statistics was provided by the POHCCJ.

353. As far as confiscations are concerned, Romania provided to the AT summarized data collected by NAMSA based on more than 60 000 court decisions related to all crimes and all judicial authorities (Table 3.22). From the figures provided in relation to confiscations, taken overall, the amounts of confiscated assets are moderate/high and it can be seen that special confiscation is applied considerably more frequently than extended confiscation⁴⁸.

Table: 3.21: NAMSA - Confiscation measures applied by the authorities

| Type of measure | Number of court decisions in which this type of measures was imposed | | | | | Sums of money (EUR) | | | | |
|---|--|--------|--------|--------|-------|---------------------|-------------|------------|-------------|------------|
| | 2017 | 2018 | 2019 | 2020 | 2021 | 2017 | 2018 | 2019 | 2020 | 2021 |
| Fine imposed as the main penalty | 95 | 386 | 434 | 392 | 279 | 2 144 050 | 3 965 671 | 1 968 750 | 744 915 | 771 316 |
| Extended confiscation | 14 | 20 | 30 | 18 | 24 | 385 152 | 795 654 | 239 688 | 272 086 | 295 136 |
| Special confiscation | 5 630 | 10 203 | 11 645 | 10 471 | 3 182 | 36 151 946 | 171 377 804 | 22 221 220 | 78 2 77 091 | 7 459 724 |
| Compensation to public authorities or institutions | 596 | 669 | 810 | 651 | 510 | 12 781 490 | 18 434 843 | 8 532 931 | 5 770 055 | 24 674 581 |

⁴⁸ There are two types of confiscation measures in Romania: special and extended confiscation. Extended confiscation measures compliment special confiscation measures – see R.4.

| | | | | | | | | | | |
|--|-------|-----------|--------|--------|-------|-----------------|-------------------|-------------------|-------------------|------------------|
| Compensation to the state | 511 | 424 | 368 | 359 | | 93 952 143 | 237 952 870 | 223 606 570 | 87 674 585 | - |
| Confiscation orders based on received from other states | 17 | 2 | 7 | 4 | 1 | 5 364 | 170 234 | 217 710 | 130 000 | 24 440 |
| Seizure orders received from other states | - | 1 | - | - | 0 | - | - | - | - | - |
| Total | 6 863 | 11 705 | 13 294 | 11 895 | 3 996 | 145 42 0 145 | 432 697 076 | 256 786 869 | 172 868 732 | 33 225 197 |

354. The authorities do not maintain detailed statistics on confiscations broken down by predicate offences (see R.33), however from the application of precautionary measures in respect of most prevalent predicate offences detected in Romania it can be concluded that confiscation of such assets takes place, including for ML offences. A more detailed assessment according to each predicate offence is conducted below based on the interviews and the case examples provided.

355. No statistics were provided on types of property seized/confiscated but the conducted interviews and information from NAMSA on managed assets (see below) confirmed that seizure and confiscation is applied for movable and immovable property and funds. The NRA noted that the Police say that they pay particular attention to money tracing for predicate offences and ML and has in recent years seized approximately 600 vehicles and 400 properties as proceeds of crime.

356. The statistics maintained by the authorities do not provide a breakdown between natural and legal persons. However, IO.7 demonstrates that both natural and legal persons are being charged for predicate offences and ML. Consequently, it follows that seizing and confiscation measures are also being applied both to natural and legal persons. The interviews with prosecutors and case examples provided confirmed this.

357. The onsite interviews also confirmed that confiscation in third party ML and standalone ML cases is rare (see also IO.7). Such cases are more complex and there is lack of experience and resources for conducting parallel financial investigations on the part of some LEAs and prosecutors (see section 3.4.1).

Confiscation of proceeds of domestic predicates

358. The onsite interviews and case examples provided confirm that the competent authorities are routinely pursuing the freezing, seizure and eventually the confiscation of the proceeds and instrumentalities of crime which are retained in Romania. Nevertheless, it was repeatedly noted that additional training, guidance, and resources for conducting parallel financial investigations

are needed (see chapter 3.4.1) to successfully pursue the confiscation of criminal proceeds in more complex cases.

359. Conducted interviews and case examples provided show that the competent authorities tend to focus mainly on confiscating the proceeds of corruption, tax evasion, embezzlement, and fraud. Just as these are investigated and prosecuted relatively successfully, the criminal proceeds arising from these crimes are also restrained and confiscated (although no specific statistics were provided to demonstrate this).

360. The authorities also asserted that the proceeds of human and drug trafficking were often confiscated without the need for a ML investigation and prosecution (see also IO.7). Crypto and cyber-crime predicates were estimated by the authorities to be a growing area, but these predicates were not pursued with parallel ML investigations and the case examples and explanations provided by the authorities indicated that there was only very limited success in achieving confiscations in this category.

361. In cases where there was the potential for a ML investigation and prosecution, the authorities advanced that even if the ML offence was not pursued, the money/goods which constituted the material object of the corruption offence were subject to confiscation. Confiscation from third parties is rare in ML cases (see also IO.7 on investigating and prosecuting third parties for ML).

362. Despite those issues set out above of a lack of resources and practical guidance (see section 3.4.1) Romania did provide several case examples of successful seizures and confiscations of the proceeds of embezzlement, tax evasion, corruption, and fraud evidencing that the authorities are implementing provisional and confiscation measures to deprive criminals of the proceeds of their crimes; Romania did demonstrate that seizure and confiscation measures are applied routinely. These case examples included some complex cases, such as described above under IO.7 in Case study 3.3. (Conviction for the ML of predicate of embezzlement, involving: OGC, shell companies, legal person, professional advisors, fake purchase contracts, real estate, freezing *and confiscating the criminal proceeds*), as well as in following cases:

Case study 3.11: Confiscation of proceeds from embezzlement and standalone ML

Three bank officers in Hungary (including one senior high ranked bank officer) set up a scheme to launder in Romania EUR 18 million embezzled between 1998 and May 2003 from different Hungarian bank accounts of natural and legal persons. The proceeds were transferred in part to companies in offshore countries (US included) and then transferred to finance a group of companies in Hungary.

During 2001 - 2003, the OCG's members transferred EUR 4,3 million (part of the EUR 18 million embezzled) to two companies incorporated in Romania, the leader of the OCG being a shareholder in all companies. The three members were appointed as internal auditors of the two Romanian companies. The transfers were made to increase the equity of Romanian companies, and then to benefit from dividends or capital gains from an increase in the value of the shares.

In 2008 the Hungarian Court convicted the three bank officers of conspiracy to embezzle, embezzlement, conspiracy to forge documents, the forging of documents and ML.

In Romania, criminal proceedings started in 2008 (after a judicial decision for transfer of criminal judicial proceedings from Hungary to Romania) and the indictment was issued in

2010, based on an exchange of information with the Hungarian judicial authorities. The leader of the OCG (the high ranked bank officer) was sent to trial for participating in organized crime and ML. He was convicted of ML in October 2017 by the Tribunal with 3-year sentence into custody. In 2017, the Court of Appeal maintained the conviction, but ordered that the sentence of three years be spent on parole.

Freezing orders were issued for the shares owned by the defendant of different Romanian companies. Confiscation was ordered in the amount of EUR 4 771 421 and USD 24 255 (company shares). Since the companies were dissolved, the shares in those companies could not be sold.

Case study 3.12: Confiscation of proceeds from tax evasion and ML

The Defendant was a member of an OCG and conspired to evade tax and laundered money between November 2013 – April 2015. The Defendant (who controlled many companies operating legitimate businesses) helped members of the OCG withdraw money from ATMs based on fictitious invoices that were used both to justify payments and to reduce the amount of VAT and corporate tax due to the state budget. Defendant then delivered the proceeds of crime to the OGC members controlling the companies. The Defendant made a plea-bargaining agreement pleading guilty to conspiracy to evade tax and ML.

The defendant was sentenced to 1 year in prison for ML on 10.10.2017. The overall penalty was 3 years and 8 months into custody. The court ordered the payment of an amount of approximately EUR 1 581 817 proceeds of crime and two real estate properties were confiscated.

Case study 3.13: Confiscation of proceeds from corruption and ML

A mayor (defendant X) received money in exchange for facilitating the restoration of property rights over several plots of land located within the area of the sector he managed. The mayor also claimed a plot of land that was transferred to him free of charge, by means of fictitious sales-purchase contracts with two intermediaries (defendants V and W) indicated by the mayor as beneficiaries. The Secretary of the District Mayor House (defendant Z), in exchange for facilitating the restoration of property rights over the plot of land claimed by the denouncer, requested, and received from him the amount of EUR 2 000 000. The two agreed to disguise the bribe as a sale-purchase contract for a plot of land belonging to a relative of the defendant, located in a peripheral area.

The High Court of Cassation and Justice - Criminal Section convicted all defendants of offence taking bribes and ML, imposing the same sentence of three-years imprisonment with the suspension of the execution of the sentence for a probation period of 8 years, ordering special confiscation of the amount of EUR 1 560 000 from defendant X, EUR 1 400 000 from defendant V and EUR 400 000 from defendant W. The court also maintained the seizure measure ordered by the prosecutor regarding a 1 000 square meters plot of land, an apartment and a garage all located in Bucharest, an apartment located in Barcelona, as well as the undivided share of 50% of a warehouse/garage located in Barcelona.

Case study 3.14 Confiscation of proceeds from trafficking of human beings and ML

Between 2014 and 2018, three people trafficked in human beings (3 victims, both adults and minors) to sexually exploit them in the territories of Norway and Portugal. The defendants used money sent to them by the victims for building a house and for buying cars. Criminal proceedings started in 2014 and the indictment was issued in 2019, based on complaints from the victims.

Two of the defendants were prosecuted for ML and pimping, convicted, and sentenced to 3 years in prison for pimping. The Court of Appeal from Craiova Court passed the final sentence in 2021, and ordered the confiscation of the proceeds of crime, respectively from one defendant a house and EUR 10 000; from another defendant: EUR 11 000. The third defendant was not proven to have received money.

Case study 3.15: Virtual assets seizure in fraud and ML case

In 2017, 11 suspects were investigated for setting up an organized criminal group involved in online frauds and ML. The suspects opened several bank accounts in the names of fake legal persons based in Romania, by using forged identity documents and offered through fake accounts of different websites and platforms different non-existent goods and services to the victims. The victims paid amounts requested as an advance and/or as expenses for the delivery while the received payments were laundered, being successively transferred through several bank accounts among those previously described and controlled by the members of the organized criminal group and in the end withdrawn either from the ATMs or directly at the banking units. The criminal activities took place online (websites/platforms), the victims being mostly from abroad. The 11 defendants, 10 from Cameroun and 1 from Nigeria, were Romanian residents. They are currently under judicial control, under the obligation to regularly appear before the court.

There was an investigation into the laundering of the proceeds of these predicate crimes. The investigation identified that the suspects used the money obtained from crime to buy several luxury cars and real estates on their names.

During the investigation, the prosecutors seized several assets (real estate, cars, contents of bank accounts) amounting to, in total, EUR 342 667. The prosecutors also seized the VAs identified in two of the suspects' Binance wallets and Ledger device (BTC, USDT, DOGE, XRP) in total approximately EUR 14 000. The VAs were transferred within the electronic wallet held by NAMSA.

In September 2022, DIOCT prosecuted the 11 suspects. The trial is still pending at Bucharest Tribunal (case no. 25654/3/2022) and the court maintained the provisional measures taken by the prosecutors.

Confiscation of proceeds of foreign predicates

363. The onsite interviews and case examples provided demonstrated that as the authorities do not pursue the investigation or prosecution of ML from foreign predicates as a policy objective (see IO.7) they also do not pursue the confiscation of the proceeds of foreign predicates, with some rare exceptions as described in Case study below.

Case study 3.16: Confiscation of proceeds of foreign predicate

Between 2013 - 2015, five Romanians were members of a transnational OCG a purpose of which was to launder the proceeds of crimes received from abroad from predicates such as fraudulent financial operations committed by other criminals based outside Romania, who opened bank accounts based both in Romania and other jurisdictions, such as Germany, Austria, France, and Netherlands. Criminal proceedings were initiated in 2013 based on a report from the Police, four defendants were prosecuted and sent to trial in 2016. The court passed its final decision in 2019, all the defendants being convicted of ML (penalty of 3 years and 2 years), together with other sentences for the commission of cybercrimes, all penalties being executed on parole. Confiscation of the proceeds of crime was ordered in respect of money frozen during the criminal proceedings, amounting to in total EUR 60 000. Restitution to the victims was also ordered in amount of EUR 12 400.

364. The authorities advanced that when criminal activity (e.g., cyber-crime) is carried out abroad it is more difficult to trace the proceeds of crime because criminal assets are often also laundered abroad (e.g., invested in real estate). The extraterritorial nature of the criminality means that all evidence needs to be collected from abroad, it is often very time consuming, and authorities lack sufficient guidance and resources to do it (see section 3.4.1).

Confiscation of proceeds located abroad

365. The authorities rarely pursue the confiscation of proceeds located abroad. Freezing orders have been requested only in relation to assets in Romania, with very few exceptions as follows: (i) there was one request for seizure of assets sent to the foreign judicial authorities by POHCCJ in 2021 (no further information was provided on this to the AT); and (ii) NAD has sent requests abroad (2017 – 5; 2018 – 3; 2019 -5, 2020 - 0 and 2021 – 6) for the ordering of seizures concerning the following categories of assets related to ML: real estate - land and houses, bank accounts and vehicles (see IO.2). These requests were all executed by the foreign authorities. However, no statistics are available on the breakdown of the amounts for each type of property. The main difficulties related to pursuing the confiscation of proceeds located abroad are the same as are described above (see section 3.4.1).

Seizure and confiscation of instrumentalities used and intended to be used for the commission of criminal offences and property of equivalent value

366. No statistics have been provided on the seizure and confiscation of the instrumentalities used and intended to be used for the commission of criminal offences and property of equivalent value. The authorities advanced that this is done in practice in all cases where relevant since according to the CC, it is mandatory to confiscate the instrumentalities and these are subject to seizure in every case, in order to guarantee the confiscation. The judge is obliged to order the confiscation of the instrumentalities or property of equivalent value and, to secure this outcome, the prosecutors pursue this from the start of the investigation. The types of instrumentalities seized/confiscated are according to the authorities: cars, IT systems, phones, as well as movable goods. The instrumentalities are systematically pursued also for evidence gathering purposes. Romania demonstrated by providing relevant case examples that it pursues the confiscation of instrumentalities and property of equivalent value systematically.

Returning proceeds of crime to the victims

367. The authorities explained that NAMSA returns the seized proceeds of crime to the victims according to the court's decision. Although no specific statistics were provided, some case

examples were given demonstrating the successful return of the proceeds of crime to the victims. For example, in 2021, the Copenhagen Municipal Court ordered the confiscation of the amount of EUR 440 034 on Romanian territory and the amount recovered was transferred in full to the victim of the crime in Denmark.

Assets shared

368. Romania has successfully shared confiscated assets with other countries based on bilateral agreements concluded by NAMSA and presented several successful case examples that showed strong and effective cooperation with international counterparts to trace and seize criminal assets. However, most of these cases are related to assets sharing based on confiscation orders issued by other countries and only a few related to confiscation orders issued by Romania. This shows that there is still room for improvement for more proactive asset tracing.

Managing seized and confiscated assets

369. Romania has effective measures in place enabling the authorities to preserve the value of seized and confiscated proceeds and instrumentalities. NAMSA is an agency established in 2015 appointed as the national office for the management of frozen and seized assets. It has several functions including managing seized assets (money, high value movable assets⁴⁹ and immovable assets). At the time of the onsite visit, the NAMSA managed around 150 assets with a total value of approximately EUR 5 599 755. The management of all other seized assets that are below the thresholds remain in the custody of the Police, owner or other custodian designated by the judicial authorities (prosecutor or judge). Confiscated assets of any type, are sold by the Fiscal Administration according to relevant procedures in place.

370. Following the interlocutory sale⁵⁰ ordered by the courts or prosecutors, all amounts of money obtained are deposited in the unique bank account managed by NAMSA. By June 30, 2022, the NAMSA managed in the unique bank account approximately EUR 66 291 325. Between 2016 and 2021, the NAMSA organised more than 415 interlocutory sales⁵¹, regarding a wide range of assets: vehicles, including luxury cars; construction materials; VAs; large stocks or merchandise; locomotives and other means of railway transportation; large amounts of oil extraction pipelines and steel coil, securities etc. The total amount obtained between 2016 and 2021 from interlocutory sales was approximately EUR 4 048 676 (with VAT). This demonstrates that NAMSA manages different types of seized assets, including VAs (see case study 3.14 above).

3.4.3. Confiscation of falsely or undeclared cross-border transaction of currency/BNI

371. Romania has measures in place to detect and prevent cross-border movements of currency and bearer negotiable instruments (BNIs) and confiscates the assets. The figures recorded for the confiscation of falsely or undeclared cross-border transaction of currency/BNIs

⁴⁹ NAMSA manages high value movable assets with an individual value over EUR 15 000 (e.g., vehicles, motorcycles, watches etc.) and stocks of assets with a value over EUR 300 000.

⁵⁰ See R.4(c.4.2c)

⁵¹ In June 2020, considering the new pandemic and the COVID health, safety, and prevention measures, NAMSA launched a web platform (<https://anabi.just.ro/licitatieonline>) dedicated to organizing auctions through electronic means (online). This innovative tool has been developed to facilitate access for potential buyers, to comply with all standards of social distancing and to minimize the costs of participating in traditional auctions.

are low. This type of confiscation is used on a limited basis and could not be said to be applied as an effective, proportionate, and dissuasive sanction.

Detecting and preventing cross-border movements of currency and BNIs:

372. Romania uses a declaration system for detecting cross-border movements of currency/BNIs above EUR 10 000 that applies when someone is entering or leaving the EU via Romania. Disclosure system is applied for unaccompanied (via mail and cargo) movements of cash/BNIs (see R.32).

373. The NCA co-operates with the Border Police to detect false or undeclared cross-border transactions of currency/BNI for all borders. This cooperation is very close and is based on the *Protocol of the General Inspectorate of the Border Police and the NCA to prevent and combat illegal migration and cross-border crime*, No. 11913 of 26.02.2010, which includes as one of the actions *preventing and combating smuggling in all its forms*, which according to the authorities, includes detecting false/undeclared cross-border transaction of currency/BNI.

374. In practice, the NCA has identified only a small number of falsely or undeclared cash cases (see Table 3.7 under IO.6). Overall, it was not demonstrated to the AT that the authorities would jointly or separately analyse cross-border transactions of currency/BNIs to identify new trends, methods, routes, etc. which would provide the NCA with the clear understanding of the methods, trends and routes used. From the case descriptions provided to the AT it appears that falsely or undeclared cash is detected via random checks or when checking belongings/vehicle of person suspected of other crimes. The Protocol between the NCA and Border Police enables cooperation on conducting *risk analysis* and would therefore allow for conducting relevant risk examination and developing risk indicators for NCA to identify suspicious cash couriers.

Confiscation of falsely or undeclared currency/BNIs

375. The authorities have applied sanctions and seizure/confiscations in cases of breach of declaration requirements, but the amounts of the fines are low and could not be considered to be dissuasive (see also R.32), and the amounts of the seizures/confiscations are low overall, which cannot be considered to be in line with the country's risks related to cash (see IO.1). This can be seen from the following statistics provided by authorities:

Table 3.22 - NCA – Fines, seizures and confiscations applied to falsely or undeclared currency

| Year | Number of cases where confiscation was applied | Annual amount of fines (EUR) | Amount seized/confiscated (EUR) |
|-------------------|---|-------------------------------------|--|
| 2017 | 22 | 14 000 | 56 442 |
| 2018 | 17 | 8500 | 111 141 |
| 2019 | 17 | 11 100 | 155 324 |
| 2020 | 6 | 4 650 | 130 368 |
| 2021 | 6 | 4 250 | 60 951 |
| 30.06.2022 | - | 19560 | 1 638 540 |

376. The authorities advanced that from 2017 until June 2022, 7 criminal cases were investigated, and investigated for ML, under the supervision of the Public Prosecutor's Office of the Giurgiu Court, on the basis of the detection of cash by the Giurgiu free trade zone border

control. In total, the following sums of money were seized: USD 338 900, EUR 700 950, GBP 488 740 and RON 36 000.

377. No BNIs have been declared or detected as undeclared for the period of 2017 until June 2022.

378. Cash movements through mail and cargo are mainly checked via random checks or based on received intelligence. Where there is suspicion, mail/cargo parcels are opened in the presence of the receiver. No information was provided by the authorities on the detection, seizure or confiscation of cash/BNIs transferred via mail and cargo that raised suspicion, were falsely declared or undeclared and this raises concerns considering the country's risks related to cash (see IO.1).

3.4.4. Consistency of confiscation results with ML/TF risks and national AML/CFT policies and priorities

379. The limited statistics available and case studies provided confirm that Romania's confiscation results are in line with its ML/TF risks, national AML/CFT policies and priorities to some extent. While statistics were not available on the most significant proceeds generating offences for asset confiscation, the available statistics on asset seized and case examples provided demonstrate that most cases relate to the prevalent predicate offences namely: corruption, tax evasion, organized crime, drug trafficking, smuggling, fraud, ML, human trafficking, and cybercrime. The number of identified falsely or undeclared cash cases is small as are confiscations in those cases.

Overall conclusions on IO.8

380. Since the previous evaluation round Romania has improved its ability to freeze, seize and confiscate the proceeds and instrumentalities of domestic predicates. It has adopted the relevant National Asset Recovery Strategy and established NAMSA that has demonstrated impressive results within the short period of time of its operation.

381. The competent authorities focus on confiscating criminal proceeds and instrumentalities of domestic proceeds related to most prevalent predicates while the confiscation of proceeds located abroad, in third party and standalone ML cases is rare. Increasing the capacity of financial investigators to carry out more complex parallel financial investigations for tracing assets and issuing practical guidance to prosecutors is desirable to improve the effectiveness of the system.

382. Sanctions are imposed for obligations to declare violations; however, the amounts are low and cannot be considered to be dissuasive. Confiscated amounts for falsely and undeclared cash are also low considering the country's risks related to cash.

383. **Romania is rated as having a moderate level of effectiveness for IO.8.**

4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

4.1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 9

- a) Romania has a comprehensive legal framework for combatting TF in line with international standards. Measures are in place to identify, initiate and prioritise TF cases to ensure prompt investigation and action.
- b) All terrorism or TF cases over the evaluation period came from investigations into terrorist propaganda online rather than the commission of acts of terrorism per se. This is broadly in line with the country's risks (see IO.1).
- c) The Romanian authorities have detected one case of TF arising in that context and, to that degree, have had the opportunity to demonstrate and have demonstrated the effective investigation and prosecution of TF. The suspect having been radicalised by terrorist propaganda online, sending money to a terrorist abroad is consistent with Romania's risk profile.
- d) The lack of TF investigations and prosecutions arising from other scenarios in a country with a population of a significant size may be, in part, attributable in some degree to a lack of awareness of some elements in the Romanian system resulting in the low number of reporting of TF suspicions by obliged entities (see IO.4 and 6).
- e) The AT are unconvinced that the potential TF threats are properly mitigated overall. The National Terrorism Strategy dates from 2002 and no policy document was shown to the AT that related to TF. Romania would benefit from having a strategy document focusing on the prevention of TF and investigating, and prosecuting TF.
- f) A full understanding of the specific roles which might be played by the terrorist financier was not demonstrated.
- g) It is difficult to generalise, based on one case, but the sanction imposed in Romania's TF case could not be said to be dissuasive.

Immediate Outcome 10

- a) Romania has a sound legal framework in place for the implementation of TF-related TFS without delay. Through Romania's legislative framework, UN sanctions are directly applicable in Romania from the moment of their adoption; however, in practice, the notification mechanism aimed at informing FIs/DNFBPs of new designations and amendments may experience some delays and the content of such communications might benefit from further detail.
- b) Romania has not identified any individuals or entities or proposed any designations to the UN sanctions committees established, pursuant to UNSCRs 1267/1989 or 1988. Romania has not been requested by another country, nor has it proposed, to take freezing actions pursuant to UNSCR 1373. No funds relating to TF-related TFS have been frozen.

- c) Obligated entities are provided with guidance and outreach on TFS by the authorities tasked with supervision. Banks and larger FIs demonstrate a clear understanding of TF-related TFS requirements and implementation practices. Other obligated entities, notably DNFBPs and VASPs, have a lesser degree of understanding of TF-related TFS requirements, which might potentially cause implementation gaps.
- d) Romania has not carried out a risk assessment of the NPO sector's exposure to TF risks, nor has it identified a subset of NPOs that fall under the FATF definition. No risk-based measures apply to NPOs.
- e) While NPO sector representatives showed some level of understanding of how NPOs could be misused by criminals, understanding of potential misuse for TF purposes is low. No guidance, nor typologies have been provided to the NPO sector by the authorities.

Immediate Outcome 11

- a) Romania implements PF-related TFS resulting from UNSCRs 1718 and 1737 without delay and in the same manner as for TF-related TFS, as the national legal framework applies to all international sanctions and does not distinguish sanctions relating to PF from TF.
- b) No funds relating to PF-related TFS have been frozen to date, nor have there been any sanctioned entities and individuals identified in Romania.
- c) Obligated entities' understanding of PF-related TFS requirements is similar to that of TF-related TFS; however, detection of indirect links and close associations with sanctioned entities and individuals is a concern. A national awareness-raising programme has been established by the authorities regarding matters relating to PF, where banks and other FIs, as well as entities engaged in commerce of dual use goods and technology, are the target audience.
- d) Supervisory authorities commonly perform their tasks to monitor and ensure compliance with PF-related TFS obligations by obligated entities within broader AML/CFT supervision. Planning of PF-related TFS examinations is commonly driven by AML/CFT concerns. Only the NBR and FSA conduct a good number of TFS on-site examinations in the banking and securities sectors. Compliance by DNFBPs and VASPs with PF-related TFS requirements is not properly monitored. A low number of sanctions have been applied for TFS breaches and those applied are not proportionate and dissuasive.

Recommended Actions

Immediate Outcome 9

- a) Develop an overarching national CFT strategy and action plan to aim for a more comprehensive assessment of TF risks and the actions which might be put into effect to meet them and to improve understanding and effectiveness in TF investigations and prosecutions. This Strategy/Action Plan would be kept under review and updated at regular intervals to remain relevant to any changing TF threat.
- b) Provide further specialist training in CFT for RIS and DIOCT (particularly in respect of the wide range of potential TF typologies) and further training to all authorities who are or should be involved in the detection of the cross-border movement of cash for TF purposes.

Immediate Outcome 10

- a) The authorities should adopt a more proactive approach for ensuring timely implementation of TF-related TFS by FIs and DNFBPs once new designations or amendments to the sanctions' lists are made by the UN. This should include not only the dissemination of such information to the private sector without delay, but also provision of more detailed information on the changes and implementation techniques, where necessary. This is particularly relevant to smaller sectors that lack resources and rely on manual screening solutions.
- b) The authorities should appoint a lead authority to take charge of the country's NPO regulation and oversight framework. As part of this new framework Romania should:
- (i) Identify a subset of NPOs that fall under the FATF definition and carry out an assessment of this subset with a view to identifying the features and types of NPOs that are particularly vulnerable to being misused for TF purposes. Subsequently, assess the TF risks to which NPOs are exposed.
 - (ii) Review the adequacy of legislative and regulatory requirements applicable to NPOs and introduce amendments, where necessary. The expected outcome of this review should comprise: (i) clear requirements regarding accountability of, integrity of and public confidence in NPOs; (ii) good practices aimed at protection from TF abuse; (iii) mechanism for risk-based oversight and monitoring compliance with the legislative requirements; and (iv) sanctioning for respective legislative breaches.

Immediate Outcome 11

- a) Similar to TF-related TFS, the authorities should adopt a more proactive approach in ensuring timely implementation of PF-related TFS by FIs and DNFBPs once new designations or amendments to the sanctions' lists are announced. This should include not only dissemination of such information to the private sector without delay, but also provision of more detailed information on respective changes and implementation techniques, where necessary. This is especially relevant to smaller sectors lacking resources and relying on manual screening solutions.
- b) Similar to TF-related TFS, the authorities (supervisors and other competent authorities tasked with TFS implementation at the national level) should issue guidance and intensify outreach activities to the private sector to guide them through the practical implementation of PF-related TFS, especially with a view to identifying indirect links and associations with entities and individuals subject to sanctions, as well as BO in complex structures. Sectors that are more material and/or those more heavily exposed to sanctions evasion risks (based on the nature of their services) need to be prioritised.
- c) Supervisory authorities should develop a list of criteria that signal increased exposure to sanctions evasion risks. Results of the analyses based on the mentioned criteria should be periodically used to determine the frequency and intensity of PF-related TFS supervision (targeted reviews, onsite checks, etc.). To ensure that the TFS examination processes are thorough, inspection manuals/checklists need to be developed and formally approved by all supervisory authorities.

- d) Supervisors should increase the number and scrutiny of TFS on-site examinations, especially of entities operating in the DNFBP and VASP sectors and prioritise more material sectors, including those with a higher exposure to sanction evasion risks.
- e) Supervisors should apply proportionate and dissuasive sanctions for TFS compliance failures, taking into consideration severity, repeated and/or systemic nature of the breaches.

384. The relevant IOs considered and assessed in this chapter are IO.9-11. The Recommendations relevant for the assessment of effectiveness under this section are R. 1, 4, 5-8, 30, 31 and 39, and elements of R.2, 14, 15, 16, 32, 37, 38 and 40.

4.2. Immediate Outcome 9 (TF investigation and prosecution)

4.2.1. Prosecution/conviction of types of TF activity consistent with the country's risk-profile

385. So far as TF threats (internal and external) are concerned, according to the current National Defence Strategy, terrorism remains at a very low level but is liable to be shaped by developments outside the country. No home-grown terrorism has been identified to date, and no terrorist organisations or cells — either domestic or foreign— are known to operate in the country. No terrorist attacks have occurred, and no terrorist groups have been detected. The authorities report that there are no terrorist groups operating in Romania of any type.

386. There is no discernible involvement of Romanian OCGs in terrorist activities. The assessment of the authorities is that Romanian OCGs which are engaged in trafficking in drugs or people from the East — or in association with foreign OCGs who do — do not currently present a risk of becoming engaged in TF. Those interviewed were of the view that such groups are unlikely to become involved in terrorism or TF. RIS said that there was no intelligence that Romanian OCGs were involved in terrorism/TF (or were likely to become involved in terrorism/TF) but this situation was always kept under review.

387. The AT was informed that there are no extremist far right groups in Romania akin to those who pose a threat in many other European countries. Romanian residents who access material from far-right groups online are checked and RIS was confident that there are no significant risks in this area.

388. Romania is on transit routes to and from areas of conflict. There are migration flows from the Middle East, North Africa, Afghanistan and Pakistan and Romania is one of several transit routes to Western Europe. There is always a risk that a very small number of those migrating may be involved in terrorism.

389. Although it is understood that Romanian citizens have not been travelling to conflict zones to fight for terrorist groups, foreign terrorist fighters from other European countries or elsewhere may travel through Romania going to or returning from conflict zones. The authorities apply preventive measures at the border, prohibiting access to Romania of persons where there are suspicions of any connection with terrorism or terrorists. Over the evaluation period no Romanian resident has been identified as a foreign terrorist fighter, no Romanian citizen has been identified as travelling abroad or intending to travel abroad to fight and no foreign terrorist fighters have been detected or arrested in Romania.

390. According to RIS, no connections have been identified between NPOs operating in Romania and terrorist organisations. Some had been looked at by RIS and no links to TF were found.

391. The authorities contend that in Romania they have found no evidence of the use of the financial sector - banking, or other forms of MVTs - or hawala for TF.

392. Radicalised Islamists in Romania (who may present a terrorist risk) are most likely to have come from conflict areas in the Middle East or, if Romanian citizens, to have converted to an extreme form of Islamism, having been radicalised online. Radicalisation through social media manifests itself in the form of isolated cases in which radical-Islamist ideology is exhibited. Terrorist supporting material may be accessed online. The risk that a person radicalised online may go on to commit a terrorist act is always present but has not materialised to date in Romania.

393. Over the evaluation period, all of the terrorism offences encountered were those concerned with terrorist propaganda rather than committing acts of terrorism per se. The phrase promoting "terrorist propaganda" in the Law on Terrorism, Art. 33²(4) refers to "Promoting a message through propaganda carried out by any means, in public, with the intention of instigating the commission of an act of terrorism, regardless of whether or not the message directly supports terrorism or whether or not the respective crimes have been committed. It constitutes a crime and is punishable by imprisonment from 2 to 7 years. Art. 4(9) of the same law defines "propaganda" as "*the systematic dissemination or the eulogy of ideas, concepts or doctrines, with the intention of convincing and attracting new followers.*" Point 9 index 1 defines "terrorist propaganda materials" as "*any material in written format, audio, video or computer data, as well as any other form of expression that advocates terrorism or exposes or promotes ideas, concepts, doctrines or attitudes supporting and promoting terrorism or a terrorist entity.*"

394. Examples of terrorist propaganda would include the systematic promotion through social media of photo/video material containing fight scenes, exhortations to jihad, glorification of terrorism or the "successes" of terrorist organisations, praise of martyrdom, combatant training, atrocities, mutilated victims, speeches of the leaders of terrorist organizations, etc.

395. All of those terrorism investigations in Romania over the evaluation period which have led to a conviction have been of these propaganda offences and any TF investigations there have been linked to these propaganda offences. There have been no other terrorism investigations and no other TF investigations other than those which were related to terrorist propaganda.

396. The Romanian authorities have obtained one conviction for TF and, to that degree, have had the opportunity to demonstrate and have demonstrated the effective investigation and prosecution of TF.

Case example of conviction in terrorist propaganda and TF:

Case study 4.1: Conviction in terrorist propaganda and TF

A Romanian citizen was convicted and sentenced for the following offences:

- **terrorist propaganda**, (Art. 332 (4) of the Law on Terrorism; and
- **TF**, (Art. 36 (1) of the Law on Terrorism (both in force until 13.04.2019, and then amended by Law no. 58/2019).

In 2015, the defendant went through a process of Islamicist radicalisation and indoctrination so that he adopted the "jihadist" cause promoted by Daesh. In 2016, he promoted online

Daesh's doctrines, with the intention of himself indoctrinating new followers, by advocating terrorist atrocities in accordance with its ideology.

The defendant used Facebook and other accounts on social networks to distribute the propaganda of Daesh and Hamas.

In 2016, the defendant met "A.H.O" on Facebook and pursued the association on a Telegram mobile data application. A.H.O said he was a Kenyan Muslim and a supporter of Daesh and wanted to travel to Daesh-controlled territories to join them. The defendant agreed to send A.H.O a small sum for that purpose.

On 24 November 2016, via a Western Union agent in Bucharest, the defendant sent EUR 110 (of his own funds) to A.H.O in Wajir, Kenya and was issued a receipt, itemising the amount transferred when converted into Kenyan shillings and received by A. H. O. The recipient was ultimately arrested in Nigeria in 2016 for recruiting for Daesh.

The defendant was convicted in 2020 and received a sentence of 2 years and 10 months imprisonment for TF (3 years in total), suspended for 4 years before the High Court of Cassation and Justice (Decision no. 149 / 24.03.2019).

397. In respect of Terrorism Offences investigated between 2017 and 2022, there were 249 such cases of which 189 were registered during the reference period (1 January 2017 to 30 June 2022) with 60 cases registered before 1 January 2017 which were still in progress on that date. 184 cases were closed because the criminal act had not taken place or there was no evidence to support that it had or there was a lack of criminal intent. In some cases, there was initially a suspicion of TF, but this was not confirmed upon further investigation.

398. A large number of the cases were registered following hoax telephone calls in which no genuine threat had been made. If a lesser offence was made out (for making the hoax call and wasting the authorities' time), fines were imposed.

Table 4.1: Terrorism cases - Statistics for 2017-2022 (all the offences stipulated by the Law on Terrorism)

| Terrorism cases - Statistics for 2017-2022 | | | | |
|--|-----------------|--------------|------------|------------------------------|
| Registered cases | Finalised cases | Prosecutions | Defendants | Convictions |
| 249 | 195 | 11 | 11 | 11 (one of which was for TF) |

399. RIS said that in cases where there was intelligence of any suspected involvement in terrorist activities, financial checks would be undertaken – together with checks into associations with those involved in terrorism.

400. There are no prioritisation criteria for dealing with TF investigations other than: *"The prioritisation takes place depending on the extent and imminence of the materialisation of the threat to national security."* In practice, TF investigations are relatively rare and would be given top priority.

401. The AT were not informed of any DIOCT investigations into TF originating from STRs (it may be the position that there is a lack of understanding on the part of obliged entities which

means that there ought to be TF suspicions, but such matters remain unreported). The investigations are of the same type. There were 15 TF investigations by DIOCT between 2017 and 30 June 2022. These were not limited only to those suspected of TF. TF investigations were carried out in cases where the suspects were being investigated for offences under the Law on Terrorism. There was only evidence of TF in one case (Case Study 4. Above). In the others there was no evidence the suspects had committed a TF offence.

Table 4.2: TF investigations by DIOCT between 2017 and 30 June 2022

| Year | Number of TF investigations |
|---------------------|------------------------------------|
| 2017 | 4 |
| 2018 | 7 |
| 2019 | 4 |
| 2020 | 0 |
| 2021 | 0 |
| 30 June 2022 | 0 |
| Total: | 15 |

402. DIOCT submitted that they did proactively investigate TF; for example in circumstances where there were minimal suspicions of TF and parallel TF investigations were conducted where a suspect was being investigated for an offence under the Law on Terrorism, consisting of checks into that person’s connections with others and their financial transactions (bank accounts, cards and money remittance services), identification of their sources of income and the assets they owned, and an assessment of whether their income accounted for their expenditure.

403. In those cases, in which there was evidence of an offence under the Law on Terrorism, checks were made to determine whether they received funding from or themselves funded any terrorist entity. No such funding connections were found save for in the case prosecuted in which there was a conviction for TF. Case Study 4.1 above, DIOCT submit, is itself an example of a proactive parallel financial investigation in that the case was opened as an investigation into the Romanian citizen's involvement in terrorist activities, provided for in art. 33²(4) of the Law on Terrorism, consisting in “the systematic promotion in the online environment of ideas, concepts, doctrines and symbols specific to the terrorist organisation Islamic State, with the intention of convincing and attracting new followers, praising the terrorist actions carried out by the members of the organisation.” The parallel financial investigation revealed the Romanian suspect’s EUR 110 transfer through Western Union to a person abroad affiliated to the Islamic State terrorist organisation.

404. All Terrorism or TF cases over this period therefore come from cases involving allegations of terrorist propaganda. And in one of those cases the TF of someone abroad had occurred. Accessing terrorist propaganda and the radicalisation from that giving rise to the commission of the TF offence is consistent with the country’s risk profile. That said, the AT considers that the lack of TF investigations and prosecutions arising from other scenarios in a country with a population of a significant size (19 million people) may be, in part, attributable in some degree to a lack of awareness of some elements in the Romanian system. Reporting of TF suspicions by

obliged entities is rare (see IO.4 and 6). An understanding of the potential risk of TF presented by NPOs was not articulated by some of those interviewed and the risk of TF by way of cash movements over the border was not fully appreciated by some of the LEAs operating at the national border

4.2.2. TF identification and investigation

405. Romania has a comprehensive legal framework for combatting TF which is in line with international standards. The general framework of national cooperation and, at national level, the prevention and combating of terrorism is organised and carried out under the National System for the Prevention and Control of Terrorism (NSPCT) in which 26 public authorities participate. The RIS co-ordinates technically through the Counter-Terrorism Operational Coordination Centre.

406. The NOPCML-FIU receives STRs from obliged entities on possible TF suspicions. The information would be analysed, processed, and disseminated immediately to the RIS and to the POHJCC. For the investigation of cases in which there are indications of TF, the NOPCML-FIU also requests data and information from the RIS. Terrorism and TF cases are investigated by prosecutors in DIOCT as these areas are within their specific areas of responsibility.

407. The numbers for disseminating cases related to TF suspicion are low (see IO.6). The authorities have not compiled and published a list of higher risk TF countries and there is lower awareness and guidance on this topic (see IO.4 and 6).

408. The competent authorities may obtain, and access relevant financial intelligence and other information required for TF investigations and prosecutions very swiftly. The authorities can access financial information, financial analysis, and bank account information, from the relevant databases which is used for the purpose of preventing, detecting, investigating, or prosecuting serious crime including TF — according to a deadline specified by the prosecutor (CPC, AML/CFT Law, and Government Emergency Ordinance no. 9/2021).

409. At the level of the Central Structure of DIOCT, there are 3 specialised prosecutors and at DIOCT's regional offices there are a further 14 in total who carry out criminal investigations into terrorist crimes. There are three judicial police officers within the Central Structure of DIOCT, and at the Police, within the Directorate for Combating Organised Crime (Terrorism Crimes Investigation Service), there are 8 judicial police officers who deal with terrorism and TF.

410. At the Police, within the regional offices, there are 15 brigades to combat organised crime, and within them, 2 judicial police officers are assigned to carry out criminal investigations in cases of terrorism and TF.

411. The approach adopted to the investigation of terrorism and TF is said to be multi-disciplinary. Prosecutors, police officers, financial experts, and officers within the RIS and DIOCT were of the view that they would benefit from specialist CFT training for investigators and prosecutors. Whilst the RIS officers have attended CFT courses, there is scope for further specialised training within the RIS in TF. DIOCT expressed the view that they would welcome further training in the investigation of TF specifically – particularly in respect of TF typologies. Relevant further training for Border Police and NCA officers relevant to the movement of cash and TF would also be of benefit.

412. There is co-operation with international partners, but no incoming MLA requests have triggered any TF investigations. The authorities said that no incoming MLA request related to terrorism or TF over the review period.

413. In discussions at the on-site visit, the focus of the agencies which are primarily responsible for CFT - RIS and DIOCT - was on terrorism rather than TF *per se*. A full understanding of the specific roles which might be played by the terrorist financier was not demonstrated evenly across all relevant agencies. When the whole range of TF risks were discussed, the authorities did not mention NPOs as an area which might present a TF risk. Other LEAs are also responsible for policing and checking the movement of people, goods and cash at the national border. In the view of the AT, the risks presented by cross-border movements of cash and difficulties in detecting such movements for TF purposes (where there might not be intelligence of a terrorism connection) were not fully understood by some of the LEAs interviewed. It may well be the position that OCGs are not currently involved in terrorism and TF but that is a position which may change in the future; this possibility was not fully appreciated by all of those interviewed.

414. The AT are unconvinced that the potential TF threats are properly mitigated overall

4.2.3. TF investigation integrated with –and supportive of- national strategies

415. The Romanian Parliament's decision no. 22/30.06.2020 approved the National Defence Strategy 2020-2024 in which the national security objectives are presented, the objectives of which include the prevention and countering of risks of terrorism associated with certain terrorist organisations, any presence in Romania of such entities, extremist-jihadist propaganda (especially online) and other processes of radicalisation.

416. The concentration of the relevant agencies - RIS and DIOCT - was on terrorism rather than TF *per se*. The *National Strategy for the Prevention and Combating of Terrorism* dates from 2002 and no policy document was shown to the AT that related to TF. Romania does not have any strategy document focusing on the combating and preventing TF specifically.

417. One of the objectives set out in the *National Strategy for the Prevention and Combating of Terrorism* (approved 2002) is to ". . . identify, monitor and continuously evaluate the risks and threats, as well as the vulnerabilities of the regarding national security . . ." The *National Strategy* sets out directions of actions towards this objective including adopting "measures against the inflows of specific means as well as financial, logistical resources used by terrorist entities developed inside and outside our territory." These generalisations are very broad as aims.

418. *The General Protocol for the Organization and Operation of the National System for the Prevention and Combating of Terrorism* (adopted 2008) is a classified document and it was not shown to the AT. The AT are informed that each institution of the SNPCT is obliged to adopt tasks and measures on TF. It is not possible to evaluate a document unseen. The AT note that the *General Protocol* dates from 15 years ago.

419. The AT see the need for an up-to-date CFT strategy, available to all who work in Romanian CFT ensuring a consistent approach and methodology. This would set out a strategy and detailed guidance in respect of the need for investigations into terrorism to be accompanied by a parallel TF investigation, the forms those investigations might take, and the way in which the different agencies would interrelate. It would set out a strategy and action plan consistent with Romania's risk profile and cover the issue of how TF threats or potential trends may be addressed. It would analyse how financial intelligence in respect of TF may be used to support policy priorities in

respect of any TF threats Romania faces. It would be kept under review and updated at regular intervals to remain current and relevant to any changing TF threat. It would set out how the TF investigations are integrated with and used to support national counter-terrorism strategies and investigations.

4.2.4. Effectiveness, proportionality and dissuasiveness of sanctions

420. The fact that there has been a conviction achieved in a TF case with an international component and that the authorities have successfully investigated, prosecuted and convicted the individual concerned (even where the amount is small) is to be commended. Obviously, it is to be hoped that the publicity around convicting for such activity may discourage others from doing the same. It is difficult to generalise, on the basis of one case, but the fact that such behaviour received a sentence of 2 years and 10 months imprisonment for TF, suspended for 4 years rather than a sentence of immediate (as opposed to suspended) imprisonment is not an aspect which could be said to be dissuasive.

4.2.5. Alternative measures used where TF conviction is not possible (e.g., disruption)

421. Most of the alternative measures apply more directly to terrorism than TF per se. The authorities do adopt preventative measures if a person poses a terrorist threat to Romania or other European countries. The entrance of that person into Romania will be blocked or, if in Romania, they may be expelled to their country of origin or to a safe third country if their life would not be safe in their country of origin.

422. Each year the authorities identify foreigners (including via international cooperation in the field of counter terrorism), who try to enter or who have entered Romania and who are suspected of being affiliated to terrorist organisations. Upon the request of RIS, the Prosecutor's Office attached to the Bucharest Court of Appeal, the MoIA and the MoJ have the capacity to: (i) declare a foreign citizen undesirable; (ii) refuse entry to Romania; (iii) prevent the granting of refugee status or to cancel that status; (iv) not grant or to withdraw Romanian citizenship; or (v) not grant or to withdraw a visa.

423. If there is insufficient evidence to prove a TF offence, but there is intelligence that the suspect poses a threat to national security, these preventive measures may be applied swiftly to remove the threat posed by the suspect. Such preventive measures are not applied if there is sufficient evidence to prove offences of terrorism or TF.

Case study 4.2: Case study of preventative measures

On 3 April 2019, the Bucharest Court of Appeal declared a Palestinian national to be an undesirable person for a period of 10 years. Ostensibly for personal reasons he had transferred funds to a relative who resided in the Gaza Strip. It could not be proved that the suspect knew that the person in Gaza to whom he was sending funds was affiliated to Hamas. It was determined, even in the absence of a conviction, that the Palestinian Romanian resident's conduct posed threats to national security as stipulated in Article 3 (i) of Law no. 51/1991 and he was successfully declared to be undesirable.

Case study 4.3: Case study of preventative measures

On 26 April 2019, the Bucharest Court of Appeal declared a person with dual Turkish and Belgian citizenship engaged in propaganda activities in favour of the KG/PKK terrorist organisation, to be an undesirable person in Romania, for a period of 10 years.

424. When notified by RIS, the General Border Police Inspectorate and the General Inspectorate for Immigration may refuse entry where a foreigner is deemed to be a danger to national security or who is reported as being at risk of financing or preparing or supporting terrorism in any way.

425. This might include those who were not Romanian nationals in the following categories: (i) foreign terrorist fighters (e.g. in August 2020 access was denied to 6 non-EU citizens who had fought in Syria with Daesh); (ii) foreigners with a combat background who were travelling to Europe for a suspected terrorist purpose (e.g. in January 2020 access was denied to 8 non-EU citizens, suspected to be members of Daesh); (iii) foreigners who displayed signs of having been radicalised and adopting jihadist ideology (e.g. in March 2020 access was denied to 24 Iraqi citizens, suspected of being members of Daesh); and (iv) foreigners suspected of being involved in logistical support activities of terrorism (e.g. in September 2021 access was denied to 7 Iraqi citizens, suspected of contributing to the support of Daesh in Iraq).

426. The prohibition of a person's access to Romania is an administrative measure ordered by the MoIA upon the proposal of the institution with intelligence suggesting that the individual would endanger national security.

427. That prohibition would be ordered prior to the presentation of the person at the border. If checks in respect of intelligence from the authorities or foreign counterparts did not reveal links to anyone in Romania relevant to terrorism or TF, the legal conditions for RIS to notify DIOCT (to start an TF investigation) would not have been met (if a link to a terrorist organisation were found the competent authorities in the state of entry would be notified).

428. DIOCT's financial investigations are subject to the rules of the CPC, obtaining authorisation in a criminal case. No criminal cases have been registered to date regarding persons who who presented themselves at the Romanian border and were denied access.

429. The authorities constantly conduct online monitoring to identify and then remove terrorist content or attempt to block access to such content where the servers are abroad. The viewing of online terrorist content plays a key part in initiating and intensifying radicalisation and the onward dissemination of that content by the radicalised user through social media platforms. Funds may also be collected online for the benefit of terrorist organisations with the use of cryptocurrencies favoured given the high degree of anonymisation.

430. In July 2020, terrorist propaganda materials displayed on three websites hosted on servers in Romania were removed. These showed the Taliban engaged in firearms training and hand-to-hand combat techniques and the use of explosive materials.

431. In June and October 2021, the access of users in Romania to two websites hosted on servers abroad was blocked. These websites promoting jihad, were fundraising for *Hamas, Daesh and Al-Qaeda* with electronic wallets for cryptocurrency donations.

432. Apart from the case already cited, the Romanian authorities have not identified Romanian nationals or foreign nationals residing in Romania who participated in the online fund-raising campaigns.

Overall conclusions on IO.9

433. The National Terrorism Strategy dates from 2002 and no policy document was shown to the AT that related to TF exclusively. The authorities therefore lacked a strategy and policy concentrating specifically on TF addressing TF in its various forms – and would benefit from developing such a strategy.

434. All terrorism or TF cases over the evaluation period came from investigations into terrorist propaganda online rather than the commission of acts of terrorism *per se*. In practice, TF investigations are relatively rare (this is broadly in line with country risks - see IO.1) and would be given top priority. The concentration of the relevant agencies - RIS and DIOCT - was on terrorism rather than TF *per se*. Further CFT training for the relevant agencies would be of benefit to improve detecting, investigating and prosecuting TF cases.

435. The Romanian authorities have successfully detected, investigated, prosecuted and obtained a conviction in one case of TF. This has been achieved even though the case involved an international element and the amount concerned was small. It is difficult to generalise, based on one case but the sanction imposed in Romania's TF case could not be said to be dissuasive. That said, the Romanian authorities have had the opportunity to demonstrate and have demonstrated the effective investigation and prosecution of TF, involving an international element.

436. Lack of TF investigations and prosecutions arising from other scenarios in a country with a population of a significant size may be, in part, attributable in some degree to a lack of awareness of some elements in the Romanian system resulting in low number of reporting of TF suspicions by obliged entities (see IO.4 and 6)

437. **Romania has achieved a moderate level of effectiveness for Immediate Outcome 9.**

4.3. Immediate Outcome 10 (TF preventive measures and financial sanctions)

438. Romania is not an international financial centre and the country's financial sector is bank-centric oriented towards providing financial services to resident clients. However, Romania's geographical location and operation of some unlicensed MVTS operators (hawala network) increases the country's exposure to TF-related TFS evasion risks, as well as TF. No evidence exists that NPOs in Romania are used for TF purposes and there is no oversight of NPOs' activities for TF prevention purposes. No terrorist cells operate in Romania, and no home-grown terrorists have been identified to date.

4.3.1. Implementation of targeted financial sanctions for TF without delay

Implementation of UNSC resolutions

439. Romania implements TF-related TFS through the Government Emergency Ordinance No. 202/2008 on the Implementation of International Sanctions (GEO no. 202/2008), as well as pursuant to the relevant EU regulations, which are directly applicable in Romania. GEO no. 202/2008 provides for the immediate implementation of all UNSCRs (including UNSCRs 1373, 1267/1989 and 1988), as well as all of the criteria prescribed therein, which are directly binding for all individuals and entities in Romania from the moment of their adoption.

440. Although all UNSCRs including changes thereto are directly applicable in Romania from the moment of their adoption (entry into force), email notifications sent by the competent

authorities to FIs/DNFBPs serve as an additional important element to raise awareness of the private sector regarding relevant changes (updates, designations).

441. When a new designation, an amendment or change to a list established by a UNSCR is announced, it is published on the website of the MoFA. The MoFA monitors the UN website around three times a day (except weekends and public holidays) for any amendments or changes to the UN TFS lists. At the same time, the Office for the Implementation of International Sanctions of the MoFA publishes information on any amendments to UNSCRs in the Official Gazette of Romania, and communicates this to the members of the CIISI, which, as explained under R.6 serves as a platform for ensuring a general framework for cooperation and consultation of competent authorities for the purpose of implementation of international sanctions.⁵²

442. The AT was provided with sample copies of emails sent by the MoFA to the relevant competent authorities regarding amendments to the lists established pursuant to a UNSCR, which generally informed that on a specific date an entity had been removed from or added to the sanctions list and provided the respective link to the press release section of the respective UNSCR committee website.⁵³

443. This process is followed-up by supervisory authorities, namely the NBR, FSA, NGO and the NOPCML, which, following notification by the MoFA, post the same information on amendments to the UN lists on their respective websites and further communicate the aforementioned information to obliged entities under their supervision.

444. Nevertheless, as the process of communication of information on amendments or changes, from a practical point of view, is primarily done manually and via the use of emails, the notification process can inevitably face some delays, i.e., from the moment of adoption by the respective UN sanctions committee to the information reaching obliged entities.

445. In addition, the notifications sent by the competent authorities to the private sector would benefit from additional details, such as providing the list of new designations, adding concrete amendments to the existing lists, etc. Currently, the emails received by the private sector, as well as the publications on the competent authorities' websites (such as MoFA, NOPCML) do not contain this level of detail and are simply aimed at informing FIs/DNFBPs about the fact that there are new designations or amendments to a particular sanction list. Although this is not considered a material shortcoming, this type of information, nevertheless, is particularly relevant to smaller FIs and DNFBPs that have limited human and technical resources in compliance areas and rely on manual screening solutions. For this purpose, the relevant competent authorities might consider issuing a consolidated list of UN designations (including updates). On the other hand, it should be noted that banks and larger FIs also make use of commercial TFS monitoring systems, which help to ensure timely detection of amendments to the UN lists. This helps to further mitigate the shortcomings related to timeliness and content of communication with regard to updates to UNSCR lists.

446. Obligated entities are provided with guidance and training on TF related TFS, within the broader context of AML/CFT initiatives and controls. Obligated entities do reach out to their

⁵² The CIISI, is chaired and coordinated by the MoFA and its other members are: MoJ; MoIA; Ministry of National Defence; Fiscal Administration; Ministry of Business Environment; Trade and Entrepreneurship – Department of Foreign Trade; RIS; Foreign Intelligence Service; NBR, FSA and the NOPCML.

⁵³ Of the samples that were provided to the AT, the emails sent by the MoFA were typically stamped either on the same or on the following day of the respective change that had occurred in the UN lists.

respective supervisory authorities for assistance regarding implementation of TFS rules; however, this varies from FIs to DNFBPs. Banks make good use of the National Banking Association, as a non-formal platform for exchanging views and information on topics that are of concern to them, including on TFS.

447. As regards to the freezing of assets and funds of individuals or entities designated pursuant to UNSCRs, the Fiscal Administration is the competent national authority tasked with producing a freezing order and maintaining a database of frozen assets and funds. Whenever a natural or legal person in Romania identifies assets and funds of designated individuals or entities they have an obligation, pursuant to national legislation, to immediately notify the Fiscal Administration, which in turn must review the mentioned notification and produce a formal order for the freezing of funds or economic resources that are owned or controlled, held or controlled individually or jointly by designated individuals or entities (GEO no. 202/2008, Art. 19(1 and 1¹)). However, during the review period, no such order has been made as no assets or funds of designated individuals or entities pursuant to UNSCRs have been identified and frozen.

Designation

448. The MoFA is the national competent authority responsible for proposing persons or entities to the relevant UN sanctions committees for designation, as well as their removal. While there is no specific domestic mechanism for proposing designations, as explained in R.6 under the TC Annex, national legislation establishes that international sanctions adopted by the UN and the EU, including the procedures and criteria envisaged therein for proposing designations, as well as requests for de-listing, are binding in domestic law for all public authorities, institutions, natural and legal persons in Romania from the moment of their adoption (GEO no. 202/2008, Art. 3(1)).

449. As for UNSCR 1373, it is implemented via the EU legal framework under the European Council Common Position 2001/931/CFSP and the EC Regulation 2580/2001. However, there are no formal procedures in place with regard to direct foreign requests for designation pursuant to UNSCR 1373. Therefore, such requests are received indirectly through the regular EU channels of communication. Nevertheless, Romania has never been requested by another country, nor has it proposed any designations pursuant to the UNSCR 1373.

450. No individuals or entities designated pursuant to UNSCRs have been identified in Romania, nor any designations to the committee established pursuant to UNSCRs 1267/1989 or 1988 proposed.

451. The CIISI, which is established for the purpose of ensuring a general framework for cooperation and consultation (information exchange) for the implementation of TFS, is coordinated by the MoFA. This body is tasked, among other functions, with providing the framework for consultations among the competent authorities regarding Romania's position in view of the adoption, amendment, suspension or termination of international sanctions regimes; issuing advisory opinions regarding the implementation of TFS in Romania; and issuing recommendations to the Prime Minister of Romania regarding national legislative measures in the field of TFS.

4.3.2. Targeted approach, outreach and oversight of at-risk non-profit organisations

452. Romania has not identified a subset of NPOs that fall under the FATF definition, nor has it identified TF threats in the sector and/or NPOs vulnerable to TF abuse, thus is not in a position to apply a risk-based measures to the sector.

453. According to Romanian legislation, natural and/or legal persons carrying out activities of general interest, in the interest of communities, or in personal interest may form associations or foundations (Associations and Foundations Law). An association is the subject of private law constituted by three or more persons who, on the basis of an agreement, share without the right of restitution their material contribution, knowledge or contribution to work for carrying out activities in the general interest of certain communities or, as the case may be, in their personal non-patrimonial interest (Associations and Foundations Law, Art 4(1)). A foundation is the subject of law established by one or more persons who, on the basis of a legal act between the living or mortis causa, constitute a patrimony affected, permanently and irrevocably, for the achievement of a purpose of general interest or, as the case may be, for some communities (Associations and Foundations Law, Art 15(1)). In addition, two or more associations or foundations can form a federation. It must be noted that political parties, trade unions and religious cults do not fall within the scope of the mentioned legislation.

Table 4.3: Total number of NPOs (2021)

| Type | Number |
|--------------|----------------|
| Association | 104 288 |
| Foundation | 20 268 |
| Federation | 1 528 |
| Total | 126 084 |

454. Although the NRA report touches upon the risks and vulnerabilities of the NPO sector, its conclusions are based on generic facts rather than a thorough assessment of threats to which Romanian NPOs are exposed. For example, the NRA notes that associations and foundations may be more vulnerable to ML/FT due to the risk of diversion of legitimate NPO funds to finance terrorists; and acknowledges that charities are most exposed to this threat due to the nature of their activities, i.e., the fact that they work with partner organisations in different jurisdictions and send cross border transfers. Other vulnerabilities include lack of guidance for NPOs; existence of anonymous donations; etc. Although some NPO-related risks and vulnerabilities are considered in the NRA, the analysis does not dive into country specific factors of Romanian NPOs' misuse specifically for TF purposes.

455. In the absence of TF risk assessment, the authorities are not yet in a position to review the adequacy of measures that apply to NPOs. Whilst registration requirements apply to NPOs (associations and foundations), there are no explicit legal requirements in relation to integrity, i.e., fitness and propriety of the owners, controllers, senior managers and trustees (for more information please see R.8). Information on the measures to ensure accountability of NPOs and to promote public confidence was not made available to the AT. For example, no requirements exist for the publication of reports, such as issuing annual financial statements with income/expenditures breakdown, or controls to ensure that all funds are accounted for and spent in a manner consistent with the purpose and objectives of NPOs. Neither are NPOs explicitly

required to maintain information on their activities and objectives, as well as any supporting information on accompanying transfers.

456. Until 2019, NPOs were subject to all AML/CFT obligations under AML/CFT legislation, including the obligation to have internal surveillance controls, apply CDD measures, keep records and report suspicion of ML/TF. NPOs' compliance with these preventative measures were supervised by the NOPCML. The NOPCML advised that supervisory plans for NPOs were mainly driven by geographical considerations, i.e., taking into account materiality (level of development) of different geographical regions of Romania where NPOs are registered/operating. Supervisory findings revealed deficient CDD practices, which consequently inhibited the NPOs' ability to identify sanctioned individuals or entities. These compliance failures consequently lead to the application of fines and written warnings. For example, in 2018, the NOPCML carried out TFS checks in 130 associations and 98 foundations, 24 of which revealed infringements in the TFS area. Subsequently, one association was fined approximately EUR 2 200 and 23 warnings were issued. For the consolidated list of remedial actions/sanctions during the entire period under review, please see the below table.

Table 4.4: Warnings and fines imposed on associations and foundations by the NOPCML until 2019 for AML/CFT breaches

| | Number of Warnings | Number of Fines | Value of Fines (EUR) |
|---------------------|---------------------------|------------------------|-----------------------------|
| Foundations | 49 | 10 | 33 308 |
| Associations | 101 | 10 | 32 664 |

457. Since 2019, when the new AML/CFT Law came into force, NPOs ceased to be obliged entities subject to AML/CFT obligations. This is a rational step taken by Romania, as subjecting all NPOs to the entirety of AML/CFT preventive measures is considered neither a focused nor a proportionate measure. However, after NPOs ceased to be obliged entities under the AML/CFT Law, there was no oversight alternative offered and thus currently there is no monitoring over NPOs' activities aimed at prevention from abuse for TF purposes.

458. Most of the NPOs' representatives met onsite showed a general awareness of the ways they could be misused for criminal purposes, but not for TF purposes. Some NPOs stated that they only make use of Romanian FIs for their transfers and refrain from dealing with high-risk jurisdictions; and/or refrain from cooperating with PEPs due to reputational risk. However, from the point of view of TF abuse, the level of NPOs' understanding was nominal.

459. No guidance papers have been issued to NPOs aimed at protecting them from TF abuse. Although until 2019 a number of outreach (training) events had been organised by the NOPCML for associations and foundations on various topics relating to AML/CFT, these training events were not aimed at TF vulnerabilities nor measures that NPOs can take to protect themselves from such abuse.

4.3.3. Deprivation of TF assets and instrumentalities

460. There have been no cases of funds and assets frozen under UNSCRs 1267 and 1373.

461. The RIS advised that any suspicion of potential TF involvement is dealt with on a case-by-case basis. The Romanian authorities have detected one case of TF, involving a Romanian citizen

who transferred EUR 110 to a sympathiser of a terrorist organization (see IO.9 for more information).

462. Romania has relevant mechanisms aimed at examining requests relating to UN (including EU restrictive measures, as the process encompass both EU and UN dealings) sanctions, in particular with respect to freezing and unfreezing of assets and providing access to frozen funds. Although there were no assets frozen under UNSCRs or confiscation orders in relation to terrorists, terrorist organisations and terrorist financiers, Romania has presented some case examples concerning the freezing of assets that were related to the EU sanctions regime, thereby demonstrating that the mechanism works in practice.

463. Consultations with obliged entities regarding TFS implementation can be provided by the supervisory authorities, NOPCML-FIU and under broader domestic cooperation initiatives (e.g., CIISI). Cases relating to freezing and unblocking of funds are dealt with by the Fiscal Administration.

464. Obligated entities show a general understanding of their obligations with regards to TF-related TFS. Banks and larger FIs have more robust controls aimed at TFS implementation in place, while DNFBPs (exception being legal professionals belonging to large financial groups) and VASPs exhibit a lesser developed understanding of their obligations and thus significantly less advanced controls. Some issues relating to identification and verification of BO data, including for complex ownership structures, have been identified (see IO.4 for more information). Nevertheless, most obliged entities are aware of their TFS reporting obligations in case of a positive match with a designated individual or entity. See more information on the TFS implementation techniques by FIs and DNFBPs under IO.11.

465. Obligated entities demonstrate awareness of legal requirements to apply enhanced measures towards clients from high-risk third countries identified by the FATF or other credible sources, as well as some jurisdictions in close proximity to Romania, including those that signal increased risk for TF or terrorism. However, the capacity of obliged entities (outside banking and MVTs operators) to identify suspicious cases related to TF is a concern. Linked to this, the NOPCML-FIU receives a low number of TF-related STRs.

4.3.4. Consistency of measures with overall TF risk profile

466. TF-related threats and vulnerabilities have been assessed within the framework of the NRA. Consequently, the level of TF threat in Romania was assessed as “Low”. As mentioned under Chapter 1, no home-grown terrorism has been identified to date, and no terrorist organisations or cells are known to operate in the country. Self-radicalisation based on global Islamic-jihadist propaganda is a security risk in Romania, but cases are isolated. The authorities have not identified links between Romanian OCGs and terrorist organisations. According to the current National Defence Strategy, the terrorist phenomenon remains at a very low level, depending on developments outside the country.

467. Romania’s financial sector is bank-centric, with a very low international exposure oriented towards providing financial services to resident clients (less than 2% of clients are non-resident). Thus, Romania’s geographical location and operation of unlicensed MVTs operators are the main determinants of the country’s exposure to TF-related TFS evasion risks. . Although TF-related TFS implementation practices by different sectors vary with some common implementation gaps observed, banks, being the most material sector, demonstrate rather sophisticated understanding of the sanctions evasion risks and increasing appetite to strengthen

TFS controls. Relevant TFS coordination and cooperation arrangements are in place, as well as mechanisms to freeze and unfreeze assets and provide access to frozen funds under the TFS regime.

468. Lack of oversight of the NPO sector exhibits certain vulnerabilities, i.e., there is no information on the inherent exposure of NPOs to TF threats, nor on controls adopted by NPOs aimed at protection from TF abuse. The RIS advised that checks on the possible involvement of several NPOs in TF activities have been conducted; however, this suspicion was not proven. The RIS treats this information as classified, therefore no concrete examples are made available to the AT as to what triggered the suspicions and how the analyses were carried out.

469. Authorities do not make sufficient use of cross border wire transfers data by analysing it periodically and in a systemic manner with a view to identifying the level of inherent exposure to TF-related threats. This combined with less nuanced supervisory approaches to TF, as distinct from ML, and lack of awareness by the private sector on how to identify TF suspicion creates a vulnerability.

470. Authorities admit that unlicensed MVTS operators are likely to operate in the country (e.g., hawala providers) and can be used to conduct cross border transfers. Authorities need to advance their approaches to proactively target the unlicensed MVTS operators.

Overall conclusions on IO.10

471. Romania's national legal framework ensures the immediate implementation of TF-related TFS. However, the processes of communication of new designations or changes thereto to all obliged entities require some improvements (in relation to timeliness and scope/content).

472. No comprehensive assessment has been carried out with regard to the risk of NPO misuse for TF purposes, consequently, no risk-based measures for NPOs have been introduced.

473. FIs and DNFBPs demonstrates a general awareness of the TF-related TFS obligations, although the implementations practices demonstrate variable degree of shortcomings. Relevant coordination and cooperation mechanisms are in place for TFS, as well as processes to freeze and unfreeze assets and provide access to the frozen funds. No freezing measures have been applied in accordance with UNSCRs 1267 and 1373.

474. **Romania is rated as having a moderate level of effectiveness for IO.10.**

4.4. Immediate Outcome 11 (PF financial sanctions)

475. Romania is not an international financial centre and the country's financial sector is bank-centric, oriented towards providing financial services to resident clients. Romania has a relatively large trading economy⁵⁴ and has six free trade zones that offer freedom from customs tariffs. The latter and their geographical location are the main determinants of Romania's exposure to sanctions' evasion risk, including potential PF activities. However, it must be acknowledged that Romania is located at a significant distance from, and has no significant commercial or other close links with Iran and the Democratic People's Republic of Korea (DPRK). Operation of unlicensed MVTS businesses (e.g., hawala networks) might add to a level of PF exposure.

⁵⁴ <https://wits.worldbank.org/countryprofile/en/rom>

4.4.1. Implementation of targeted financial sanctions related to proliferation financing without delay

476. Romania makes use of a combination of national, as well as supranational (at EU level) mechanisms to implement PF-related TFS. On the national level and pursuant to GEO 202/2008, implementation of PF-related TFS follows the same processes as with TF-related TFS. At the EU level, they are addressed based on Council Decision 2016/849 (CFSP) and EU Regulation 1509/2017. UNSCR 2231 on Iran is transposed into the EU Legal framework through EC Regulation 267/2012 as amended by EC Regulations 2015/1861 and 1862. Both regulations are binding in their entirety and directly applicable in all Member States.

477. As described in more detail under IO.10, GEO 202/2008 ensures that all UNSCRs are in their entirety binding for all individuals and entities in Romania. It also provides for a mechanism for notification of designations and updates to relevant competent authorities by the MoFA, including those tasked with supervision, which in turn publish this information on their websites and communicate it further to the obliged entities falling under their supervisory competences. Communication of new/updated lists of designations proves useful, however, as explained in detail under IO.10, the process might experience delays in certain circumstances. Moreover, the content of communication is not comprehensive enough (see Section 4.3.1 for more information).

478. Although all UNSCRs including changes thereto, are directly applicable in Romania from the moment of their adoption, notifications sent by the competent authorities to FIs/DNFBPs serve as an additional important element to raise awareness of the private sector of the relevant changes (updates, designations). This information is particularly relevant to smaller FIs and DNFBPs that have limited human and technical resources in compliance areas and rely on manual screening solutions. On the other hand, most banks and most of the MVTs operators supervised by the NBR use specialised automated screening solutions that are updated daily (see Section 4.4.3 for more information).

4.4.2. Identification of assets and funds held by designated persons/entities and prohibitions

479. At the national level, legislation establishes the domestic legal framework in relation to the implementation of all UNSCRs, including of PF-related TFS. The process as explained for TF-related TFS in IO.10 is also used for PF-related TFS.

480. The Department for Export Controls of the MoFA is the authority responsible for implementing government policy in the field of export/import controls, dual use products and other military operations⁵⁵. Authorities informed that specific information on the process of granting of export licenses for dual used goods is classified; therefore, not made available to the

⁵⁵ Despite not having identified funds and resources of designated individuals pursuant to UNSCRs, Romania has had experience in identifying and freezing the funds and resources of designated individuals pursuant to EU sanctions, in the context of the non-proliferation EU restrictive measures regime against Syria (Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures in view of the situation in Syria and Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011). Freezing order by the Fiscal Administration can be found here: https://www.anaf.ro/anaf/internet/ANAF/info_ue/sanctiuni_internationale/ordin_blocare_debloare.

AT. The Fiscal Administration is the competent authority that deals with the requests for freezing and unfreezing of funds or economic resources.

481. No fund and/or assets linked to relevant DPRK or Iran UNSCRs have been identified nor frozen in the country. In the period under review, no reports have been filed in relation to PF-related TFS under the UNSCR regimes. This is generally in line with the country profile, as Romania is geographically located at a significant distance from, and has no significant commercial or other close links with, the countries concerned.

482. The CIISI is established for the purpose of enabling a general framework of cooperation for the implementation of all UNSCRs. Among its other duties as elaborated in IO.10, the CIISI ensures consultation between authorities and public institutions in Romania, including UNSCRs relating to PF.

483. The National Strategy for Preventing and Combating the Proliferation of Weapons of Mass Destruction and Their Delivery Systems (Strategy) has been established, which covers 2020-2025 and is aimed at developing and re-enforcing the framework for cooperation and coordination of the actions taken by the Romanian authorities, as well as the necessary mechanisms and tools for preventing and combating threats to national security posed by PF. The Strategy is implemented by the Inter-institutional Consultative Group. The Action Plan for the Strategy is a classified document, therefore, was not made available to the AT; however, the authorities informed that the Action Plan concentrates on establishing inter-institutional cooperation mechanisms aimed at strengthening the capacity to respond to potential risk situations related to illicit transfers of sensitive items and the use of national financial systems for PF purposes. During the review period, the following actions have taken place: PF related awareness-raising activities ("PROTECTOR" Programme) aimed at the domestic commercial and financial-banking environments; discussions on the review of national legislation concerning PF (Interinstitutional working meetings); and management of cases incidence to risks associated with the proliferation of WMD (e.g., related to export controls).

4.4.3. FIs, DNFBPs and VASPs' understanding of and compliance with obligations

484. The screening of clients against sanction lists and detection of any potential PF-related TFS assets or funds is conducted by obliged entities also in the same way as for TF-related TFS (see also IO.10). The institutions supervised by the NBR, namely banks, EMIs, PIs screen clients against the sanctions lists by using specialised commercial IT programs that are updated on a daily basis. They carry out ante factum checks, either manually or automatically for all transactions, and when they perform CDD on the client at the time of onboarding or review of CDD information.

485. Within the screening process, banks commonly check the name of the client, the date of birth, the place of birth, shareholders, ultimate beneficial owners, signatories, legal owners, etc. These checks are done at the time of onboarding, execution of a transaction and periodically. Most non-banking FIs use lesser sophisticated screening systems, and the frequency/scope of screening is lower compared to that of banks, although all uniformly confirm that they screen a client before onboarding.

486. Most of the TFS compliance failures in the banking sector, as identified by the NBR, are linked to insufficient depth of analysis performed before closing potential TFS alerts. The findings show that the scope of analysis performed by banks in order to establish the nature of the

financial operations and identify possible indirect links to sanctioned individuals and entities is not always sufficient. Other deficiencies relate to the timeliness of the analysis of such alerts.

487. The TFS screening solutions used by PIs and EMIs vary from those acquired from well-known commercial service providers to systems designed in-house. Supervisory actions identified, particularly in the case of the latter, an inadequate parametrisation of in-house screening tools potentially hindering the entity's ability to identify the sanctioned persons/entities.

488. Smaller FIs (outside banking and EMIs/PIs sector) have less sophisticated screening systems, and the frequency/scope of screening checks is lower compared to that of banks/PIs/EMIs. The NBR's and the FSA's examination findings show that in some cases their supervised institutions fail to implement regular (periodic) checks of the client portfolio. Examples of other TFS compliance deficiencies include: (i) failure to define the process for updating the sanctions' list (for in-house systems or manual solutions); (ii) failure to define reporting procedures; (iii) failure to implement training procedures on TFS; (iv) failure to analyse sanctions alerts on time; and (v) inability to provide evidence on performed verification checks against TFS list, etc.

489. The understanding of TFS obligations by DNFBPs (the exception being legal professionals that form part of larger international groups) and VASPs is developed to a much lesser degree than that of the financial sector. Apart from the general requirement to conduct screening against sanctions lists, limited knowledge was demonstrated regarding freezing obligations, as well as less articulated processes on scope and frequency of screening and general awareness of PF risks. Supervisory data shows that commonly identified breaches in the DNFBP sector relate to the insufficiency of CDD data that enables identification of designated persons and entities.

490. Most interviewed entities had difficulty in explaining how they would identify persons and assets with indirect links to designated persons or entities. This is consistent with the general approach taken with regard to TFS by obliged entities, whereby most interviewed concentrate on screening their clients to satisfy themselves that neither the client, nor the beneficial owner, nor the beneficiary of funds are under UN sanctions lists. Apart from this, private sector representatives could not point to additional controls aimed at identifying indirect links or close associations. Difficulties in identifying BO in complex structures have also been noted by banks (see IO.4 for more information) which has a potential negative bearing effect on identifying sanctioned entities and individuals.

491. On a positive note, some banks interviewed on-site have identified sanctions evasion risk amongst their top three (at times - top five) risks which shows acknowledgment of TFS importance, awareness of sanctions evasion risks and to some extent acknowledgment of the related difficulties in identifying assets that might be indirectly owned or controlled by sanctioned individuals or entities. It must be also noted that, in order to safeguard sanctions evasion related vulnerabilities, the NBR took actions to raise awareness and improve implementation practices aimed at identifying close associations with sanctioned entities/individuals (for more information see section 4.4.4).

492. In addition to the above-described screening practices against the list of sanctioned entities and individuals, most obliged entities take account of the origin country of clients. Larger FIs scrutinise transactions with the DPRK and Iran - which trigger enhanced due diligence measures. Smaller FIs and some DNFBPs stated that they refrain from establishing any business relationship with clients from the DPRK and Iran.

493. When questioned on hypothetical situations relating to a possible match with a designated individual under TFS, many obliged entities explained that they would refrain from providing services to the clients listed under UN lists, as opposed to filing a report to the NOPCML-FIU, Fiscal Administration and/or supervisory authorities. No reports concerning UN sanctions have been submitted to date; however, there were reports concerning EU sanctions.

4.4.4. Competent authorities ensuring and monitoring compliance

Supervision

494. Supervision for implementation of PF-related TFS is carried out by the NBR, the FSA, the NGO, SRBs and the NOPCML. However, the AT has not been provided with information concerning implementation of the NGO's supervisory duties in the TFS area. Supervisory authorities commonly monitor compliance with the implementation of TFS within the broader AML/CFT checks; however, in 2019 the NBR started conducting targeted inspections in the TFS area. In this context, supervision of PF-related TFS is no different from supervision of TF-related TFS.

495. Supervisory authorities do not have specific off-site tools to monitor exposure to sanctions' evasion risks and/or controls in the TFS area as opposed to the general AML/CFT area; this finding is less applicable to the NBR, see below. Thus, planning of PF-related TFS examinations is not entirely risk-based, i.e., it is mainly driven by AML/CFT concerns where TFS is an integral part of full scope AML/CFT examinations. The NBR is the most advanced (compared to other supervisory authorities) in developing its fully-fledged risk-based supervisory approach to TFS and to some extent separating it from AML/CFT supervision. For example, whilst in 2017-2018 supervision of TFS by credit institutions was an integral part of AML/CFT supervision, starting from 2019, the NBR has a possibility to conduct targeted examinations, including in the TFS area. Moreover, starting from 2022, the NBR developed periodic off-site reporting for credit institutions that encompass criteria that are also relevant to the TFS area. In addition, the NBR approach provides for a possibility to conduct ad-hoc examinations based on triggers, such as whistle-blower information, information received from the other competent authorities, such as the Fiscal Administration or RIS, serious compliance failures, etc. The FSA started strengthening its supervisory approach relating to TFS at the beginning of 2022 – the process was triggered by the imposition of EU sanctions against the Russian Federation.

496. Whilst overall (see table 4.4.1), the NBR and FSA conduct a good number of on-site examinations, the number of on-site examinations is significantly lower by the NOPCML (this is attributed to the shortage of resources at the NOPCML's supervision division) and does not cover all supervised sectors. No information on on-site checks have been provided by the NGO and SRBs.

497. The scope and depth of the NBR's checks are the most comprehensive in comparison with the checks performed by the other supervisory authorities. In addition to on-site inspections, the NBR carries out TFS off-site reviews: 2 in 2018; 1 – in 2019; 28 – in 2020; 6 – in 2021; and 14 – by July 2022.

Table 4.5. On-site examinations in TFS area by sector⁵⁶

| | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 ⁵⁷ |
|--|---------------------|--------------------------|----------|--------|---------------------|--------------------|
| Banks | 34(30) | 23(19) | 28(23) | 17(9) | 5(3) | 14(5) |
| PIs | 7(7) | 4(4) | 0 | 3(3) | 2(2) | 0 |
| EMIs | 1(1) | 0(0) | 0 | 0(0) | 1(1) | 0 |
| Securities entities | 47 (1) | 43 (2) | 42 (1) | 41 (1) | 41 (1) | 18 (0) |
| Insurance entities | 4 (0) | 3 (0) | 10 (0) | 7 (0) | 10 (0) | 1 (0) |
| Credit unions | 4 (0) | 13 (0) | 30 (5) | 0 | 0 | 2 (0) |
| Exchange offices | 32 (6) | 26 (9) | 47 (22) | 0 | 20 (8) | 0 |
| VASPs | 0 | 0 | 0 | 0 | 0 | 2 (0) |
| Non-bank financial FIs⁵⁸ | 6 ⁵⁹ (4) | 13 ⁶⁰ (13) | 15(15) | 6(6) | 9 ⁶¹ (9) | 1(1) |
| Real estate brokers (agents) | 11 (2) | 50 (5) | 0 | 0 | 0 | 16 (1) |
| DPMS -pawnshops | 12 (1) | 13 (1) | 47 (19) | 0 | 56 (3) | 0 |
| Lawyers | 0 | 0 | 49 (1) | 0 | 0 | 0 |
| TCSPs | 0 | 0 | 0 | 0 | 0 | 2 (0) |
| Notaries | 2 (0) | 0 | 16 (1) | 0 | 0 | 0 |
| Accounting, audit and tax consultancy | 0 | 12(0) | 111 (26) | 0 | 0 | 0 |
| Casinos and gambling⁶² | 2 (0) | 4(1) | 0 | 0 | 0 | 0 |

498. Although there is no detailed on-site inspections methodology for checks in the TFS area (i.e., a manual or checklist that comprehensively outlines how supervisors conduct TFS compliance checks, i.e., what is being checked and how), the NBR and FSA have advised that in practice testing the application of internal TFS procedures by obliged entities and sample testing of client files and transactions, as well as verification of the screening solutions forms an integral part of on-site examinations. The on-site checks performed by the NOPCML concentrate on sampling of client files and their CDD data with a view to detecting sanctioned entities and/or individuals. No information on how the on-site checks are carried out has been provided by the NGO or SRBs. The NBR and FSA would benefit from formalising the detailed rules for TFS on-site

⁵⁶ This table displays all on-site examinations which include TFS element. No distinction is drawn between TFS related to TF and PF checks by the supervisory authorities, as well as no distinction between UN and EU sanction regimes. In brackets – number of onsite examinations out of total that identified infringements in TFS area, e.g., 20(8) – out of 20 onsite examinations, 8 identified TFS compliance shortcomings.

⁵⁷ Until 30.06.2022.

⁵⁸ Supervised by the NBR.

⁵⁹ Out of which 3 act also as PI.

⁶⁰ Out of which 1 act also as PI.

⁶¹ Out of which 1 act also as PI.

⁶² Inspections carried out by the NOPCML.

checks, and the NOPCML should deepen the scope and depth of on-site checks in the TFS area, as well as formalise these processes.

499. Given the deficiencies of FIs/DNFBPs in the area of compliance with their TFS obligations, as described above (see section 4.4.3), sanctions applied for TFS breaches are not always proportionate and dissuasive. According to the FSA, this is largely attributed to the fact that securities and insurance sectors are not heavily exposed to sanctions evasion risks; and that breaches found during on-site examinations are not severe and are being remedied by the supervised entities in a short period of time after the on-site visit. On the other hand, whilst the banking sector is most exposed to sanctions evasion risks, the NBR's on-site supervision programme is intense (see table 4.4.1) and overall compliance monitoring approach is thorough, having led to identification of large number of deficiencies in the banking sector that resulted in remedial measures being applied. Oversight of TFS compliance amongst the DNFBPs and VASPs is not sufficient and thus, the number of sanctions applied appears to be low.

500. TFS infringements found by the NBR, the FSA and the NOPCML often result in written warnings and mandatory letters to remedy shortcomings (which is not considered a sanction); however, there were also fines applied by the NBR and NOPCML. The NBR issued five warnings and applied two fines for two banks amounting to approximately EUR 19 000 - for TFS infringements relating to the EU sanctions regime. During the review period, the NOPCML applied three fines for exchange offices amounting to approximately EUR 6 300; three fines for real estate brokers amounting to approximately EUR 6 300; one fine for DPMS amounting to approximately EUR 2 000; two fines for accountants amounting to approximately EUR 4 200; and one fine for a FI engaged in lending amounting to approximately EUR 2 000. Since 2020, the NBR makes information on AML/CFT breaches and subsequent sanctions applied public; thus, if TFS forms a part of AML/CFT examination, the information on TFS related shortcomings/sanctions is made public as well.

Awareness raising and guidance

501. With a view to increasing a general awareness on PF related TFS, the national awareness program called "*PROTECTOR – Doing Business in a Safe Environment*" is dedicated to educating the relevant stakeholders about the risks arising from TFS non-compliance with a focus on preventative measures, including on aspects related to identifying indirect links to sanctioned individuals and entities, geography-related red flags, sanctions' evasion techniques, etc.

502. The recipients of this initiative are banks, other FIs and commercial industry engaged in manufacturing of sensitive goods, logistics, import-export of goods, transport, and scientific research (relating to innovation, new technologies). In this context, two conferences have been organized to date, hosted by the NBR, one in 2019 (with 117 FIs' representatives, including from 32 banks, 9 PIs and EMIs, and as well as 40 non-banking FIs) and the second in 2020 (98 participants from the banking sector). The NBR can be commended for being proactive in recognising the need for deeper training in the TFS area and organising delivery of presentations on detection of indirect links to sanctioned individuals and entities, as well as providing guidance and consultations for the supervised FIs. This is a positive step which is especially relevant given banks' exposure to the sanctions' evasion risk.

503. No specific information on outreach to DNFBPs or VASPs in the PF-related TFS area was made available to the AT. However, the NOPCML reports that the SRBs and NGO are being informed on new developments in the TFS area, and information on the NOPCML's website include references to updated sanctions' lists.

Overall conclusions on IO.11

504. Through Romania's legal framework the UNSCRs on PF are implemented without delay. The authorities have cooperation and coordination platforms for TFS, including for PF, and they organize awareness raising initiatives for a targeted audience (mainly FIs). During the review period, no funds/assets linked to relevant DPRK or Iran UNSCRs have been identified and frozen in Romania.

505. Whilst banks, being the most material sector and most exposed to sanctions evasion risks, have the most sophisticated controls in place when compared to the other sectors, the identification of indirect links and close associations to sanctioned entities and individuals remains a concern, especially in light of some BO identification issues. Other sectors outside banking use less advanced TFS implementation techniques with some processes having notable shortcomings; that is of a special concern in the DNFBP sector.

506. Whilst the NBR's supervisory approach to TFS is generally thorough and requires minor revisions, other supervisory authorities need to significantly advance their supervisory approaches to PF-related TFS supervision. Frequency and intensity of on-site checks in DNFBP and VASPs sectors require major improvements. The number of sanctions applied for TFS breaches is relatively low and lack proportionality and dissuasiveness.

507. **Romania is rated as having a moderate level of effectiveness for IO.11.**

5. PREVENTIVE MEASURES

5.1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 4

- a) In general, banks demonstrated a good understanding of ML risks to which they are exposed. Most were able to identify products and services that are more vulnerable to TF and articulate how these could be used for TF purposes. However, understanding of specific inherent risks presented by legal persons was less developed in some banks. Understanding of ML risks in non-bank FIs, including PIs, was also generally good, but understanding of TF risk is less developed and there is less understanding of business specific risks by exchange offices. Exchange offices In the DNFBP sector, there was little appreciation of the risks that may be present in offering company services, and notaries underestimate the risks presented by the important gatekeeper role that they play for real estate transactions.
- b) Measures have been taken to mitigate the risk that is presented by use of cash, including legislative restrictions and close monitoring by banks and PIs, including MVTS operators. However, current thresholds for occasional transactions conducted by currency exchange offices do not facilitate the application of mitigating measures commensurate with risks faced in this sector. For some smaller FIs and DNFBPs, including exchange offices and casinos, too much reliance is placed on sending CTRs to the NOPCML-FIU as a mitigating measure.
- c) CDD measures applied by obliged entities are generally risk-based. This is not the case for exchange offices and most DNFBPs. Several sectors, including banks and PIs, have implemented effective automated monitoring systems. For DNFBPs, very little focus is given to scenarios aimed at detecting TF.
- d) Outside of banks and PIs, too much reliance is placed on self-declarations and domestic registers of BO to find out and verify the BO of customers that are legal persons. Registers have not yet been demonstrated to be accurate and up to date.
- e) Generally, EDD measures are being effectively applied. However, despite the risk of corruption, outside sectors supervised by the NBR, online casinos and VASPs, family members and associates of prominent individuals will not be identified in all cases since insufficient use is made of public sources and self-declarations. Detection of indirect links to sanctioned entities and individuals is a concern.
- f) Reporting of suspicion of ML/TF is concentrated in three sectors: banks, MVTS operators and notaries. Other sectors account for a negligible number of STRs - where there is evidence of under-reporting of suspected ML/TF. In the case of the legal sector, professional secrecy requirements interfere with reporting under the AML/CFT Law. Outside the banking sector and some MVTS operators, no specific focus is given to scenarios for detecting and reporting TF, except for connections to high-risk countries.
- g) Larger FIs have effectively developed three lines of defence, including an independent audit function which covers AML/CFT compliance. Elsewhere, controls and procedures are adequate. There are no barriers to group-wide cooperation.

h) There are gaps in the scope of application of AML/CFT requirements to VASPs. Notwithstanding this, the sector already has a relatively good understanding of risk and AML/CFT requirements.

Recommended Actions

Immediate Outcome 4

a) Supervisors and the NOPCML-FIU should provide: (i) further guidance on sector specific risk factors, e.g., company services and handling cash, and “red flags” for transaction monitoring, particularly regarding TF; (ii) typologies for prominent offences seen in Romania where not already available; and (iii) guidance on practical implementation of TFS, particularly identification of indirect links to entities and individuals subject to sanctions.

b) Supervisors should strengthen efforts to promote risk understanding, such that risks are understood and articulated, e.g., in sectors where risk is under-estimated. The FSA and NOPCML should ensure that obliged persons periodically conduct business risk assessments (BRAs) in line with the AML/CFT Law and take appropriate measures to mitigate risk. This is particularly important for exchange offices. Deeper assessments of risk presented by legal persons should be shared with obliged entities once undertaken.

c) Supervisors should more actively enforce the prohibition on placing exclusive reliance on registers of BO as a method for verifying BO information under CDD measures.

d) Reporting levels across sectors should be actively monitored by supervisors, and measures taken to promote the detection and reporting of suspicion, particularly in those sectors identified as presenting a higher ML risk that do not report or make only a negligible number of STRs. The Bar Association and the NOPCML-FIU should publish guidance for the legal sector to address possible conflicts with professional secrecy requirements.

e) Supervisors should provide additional guidance on identification of PEPs in cases where obliged persons do not subscribe to databases provided by third parties.

f) The FSA and NOPCML should ensure that all sectors apply risk based CDD measures, including exchange offices.

g) The Authorities should extend preventative measures to all VASPs, as defined in the FATF Standards.

508. The relevant IO considered and assessed in this chapter is IO.4. The Recommendations relevant for the assessment of effectiveness under this section are R.9-23, and elements of R.1, 6, 15 and 29.

5.2. Immediate Outcome 4 (Preventive Measures)

509. Romania’s financial sector remains dominated by banks, a large share of which is foreign owned, and the banking system holds around 80% of financial sector assets. The traditional non-bank financial sector remains underdeveloped. No information is available on the size of the DNFBP market. Further information on materiality of the financial sector is available in section 1.4.3 of Chapter 1.

510. Section 1.4.3 of Chapter 1 also provides information on the relative importance of each sector. Based on materiality and several other factors, including limits placed on the use of cash

(as described in Chapter 1), the banking sector is weighted as the most important. PIs, including MVTS operators, are also weighted as most important, given the country's ML risk assessment of this sector (medium-high), widespread use of cash (despite limits placed thereon), and high number of STRs. Exchange offices, and, amongst DNFBPs, notaries, lawyers, accountants and TCSPs, and VASPs are weighted as highly important. All other sectors are weighted as a moderately or less important.

511. Section 1.4.4 of Chapter 1 identifies some minor gaps in the coverage of FIs and DNFBPs. The following activities which are covered by the FATF definition of VASP are not subject to the AML/CFT Law: (i) exchange between one or more forms of VAs; (ii) transfers of VAs; (iii) safe-keeping and/or administration of VAs (except for provision of wallets) or instruments enabling control over VAs; and (iv) participation in, and provision of financial services related to, an issuer's offer and/or sale of a VA. Due to the materiality of the sector, this limitation in scope is important.

512. AML/CFT requirements are not applied to business conducted remotely in Romania by EEA FIs. Under EEA arrangements, equivalent home country requirements apply to such business conducted in Romania.

513. The AT's findings on IO.4 are based on interviews with a range of private sector representatives, and, where available, supervisory data and other information from the Romanian authorities (including the NRA and completed questionnaires).

5.2.1. Understanding of ML/TF risks and AML/CFT obligations

514. Understanding of ML/TF risks and AML/CFT obligations varies according to the sector and size of the obliged entity.

515. During the onsite visit, the NRA (recently adopted), including findings on risk, had not yet been shared with the private sector. Whilst some banks had been involved in the NRA, directly or through the Romanian Association of Banks, the involvement of other banks and other sectors had been limited, at most, to providing input through questionnaires. This necessarily affects their understanding of risk.

Banks

516. In general, banks demonstrated a good understanding of the ML risks to which they are exposed (e.g., use of cash, geographic risk, transactions connected to real estate, PEPs, use of strawmen), and agreed that a medium assessment of residual ML risk in the NRA was appropriate given the more mature control environment found in the sector (notwithstanding that the banking system is identified in many ML typologies). However, there was less understanding in some banks of the risk presented by legal persons (e.g., use of shell company bank accounts to process linked incoming and outgoing transfers - "transit" accounts).

517. Most banks were able to identify products and services that are more vulnerable to TF and able to articulate how these could be used for TF purposes. One bank, however, demonstrated a lower awareness of TF risks and mitigating measures, citing only the use of screening of lists and some high-risk countries. Banks were also aware of the TF risks presented by NPOs, though none considered that their particular NPO customers presented a high risk given particular activities.

518. Banks prepare BRAs and most demonstrated that these are updated regularly (in most cases annually). Higher risk customers always include PEPs (where the risk of corruption is greatest) and customers linked to high-risk third countries. Cash intensive clients (a typology that commonly features in STRs) and transactions related to the real estate sector were also typically rated as presenting higher risk (both linked to organized crime and common predicates). Other examples given of higher risk factors included use of complex structures, legal persons using the same registered office, high levels of transactions over an account, and sensitive activities (for example, pharmaceutical companies and consulting services). Few banks identified a resident legal person with non-resident ownership as a risk factor, notwithstanding that there has been abuse of shell companies.

519. Methodologies used by banks for the BRA, in general, are fair and sound. Most mentioned also setting risk appetites and identifying types of clients that could not be accepted under any circumstances, e.g., VASPs, adult entertainment, gambling, and offshore companies, demonstrating a conservative approach.

520. In the vast majority of planned inspections conducted in 2021 and 2022, the NBR evaluated BRAs. In 2021, it also evaluated methodologies for performing and updating risk assessments (as well as subsequent management and mitigation of risks). Some weaknesses were observed by the supervisor, including: (i) methodologies not considering all risk factors or documenting sources of information used to assess risk; (ii) absence of procedures to monitor changes in risk or update risk assessments; and (iii) failure to consider results of the EU supra-national risk assessment. The NBR has explained that these findings were not prevalent amongst banks supervised.

521. The process of customer risk classification is automated and uses a set risk factors (activity type, transaction volume, cash flow etc.) to compute ML/TF risk assessments for each customer. Despite the extensive list of risk criteria used to rate customers, most customers are assessed as presenting a low risk (except for one bank, where risks were evidently higher). One reason for this is that customers resident in Romania, including legal persons, are generally considered to present a lower risk (though such persons are involved in ML schemes discussed in the NRA). The effect of such an approach is limited since banks do not apply simplified CDD, even when permitted by law (in low-risk cases).

522. All banks demonstrated a sophisticated understanding of their AML/CFT obligations and of their own AML/CFT policies and procedures. Banks were clear on their respective obligations related to identification, freezing, and reporting of TFS-related cases.

Non-bank FIs

523. The understanding of ML risks in non-bank FIs, including PIs, supervised by the NBR was also generally good. Understanding of FIs supervised by the FSA and NOPCML varied among different sectors/entities. However, many non-bank FIs struggled to articulate how their institution could be misused for TF purposes. The main exception to this was a global MVTs operator that trades in Romania through agents.

524. Larger non-bank FIs supervised by the NBR (including PIs) had conducted a BRA and so were well placed to understand risk. Methodologies used for the BRA, in general, are fair and sound and are approved at management level. Like banks, the risk assessment is updated whenever necessary, but at least annually, also considering changes in strategy and organisational structure. Non-bank FIs supervised by the NBR, have also set risk appetites.

Inspections of lenders have revealed that some have not developed methodologies for updating such risk assessments.

525. MVTs operators licensed elsewhere within the EEA were able to confidently articulate business specific risks, for both ML and TF (e.g., connected to drug and human trafficking, tax evasion, use of NPOs for TF purposes, and use of agents). FIs supervised by the FSA are not preparing BRAs in practice and understanding of risks varied, with awareness highest in asset/fund management companies and the insurance sector. There was less understanding of business specific risks by the post office (MVTs – postal money orders) and exchange offices.

526. All non-bank FIs recognized (as required by law) PEPs and customers linked to high-risk countries as presenting a high risk. Other criteria for assessing risk varied across institutions but included: (i) links to STRs or law enforcement enquiries; (ii) sensitive activities - including gambling; (iii) high customer transaction levels (above EUR 10 000 per month (PIs)); and (iv) real estate (lending). Some non-bank FIs have also developed risk appetites which exclude certain types of customers (e.g., VASPs). Handling of cash was also recognized as a risk by many, with the possibility of conversion of large amounts at exchange offices. One exchange office mentioned a conversion of EUR 80 000.

527. Larger FIs which process high numbers of transactions per day, including MVTs operators licensed elsewhere within the EEA, commonly use algorithms to define customer risk profiles. When assigning risk to customers, greatest focus is given to geographic origin and volume/quantity of transactions. In the case of exchange offices, the frequency and volume of transactions generally determine the risk level of occasional customers. One asset manager's description of risk factors was particularly comprehensive, taking account of customer activity, BO, internal blacklisted customers etc.

528. Like banks, the frequency of risk assessment updates – business (where conducted) and customer - depends on the risk of the business relationship.

529. Most non-bank FIs demonstrated a generally good understanding of AML/CFT obligations, as reflected in internal AML/CFT policies and procedures. However, understanding of obligations is more limited at exchange offices and the post office (MVTs – postal money orders), which have not implemented risk-based CDD measures (although the risk of the post office is somewhat mitigated, as their transaction volume is low and mostly domestic). Exchange offices also provide services to legal persons (through representatives), notwithstanding that legislation does not permit this, and screen against sanctions lists only for transactions above EUR 10 000. The NOPCML keeps information on the percentage of entities that have presented deficiencies in knowledge (and application) of AML/CFT provisions leading to sanctions for its activities in 2019 and 2020. Understanding of AML/CFT requirements was lowest amongst exchange offices, where around 70% presented deficiencies. Similar information is not available from the FSA. However, it appears that brokerage companies do not understand what is expected when placing reliance on foreign counterparts to undertake some elements of CDD.

530. Understanding of TFS-related obligations in non-bank FIs was less robust than in the banking sector and varied by institution.

DNFBPs

531. DNFBPs in general demonstrated a reasonable understanding of ML/TF risks present at a country level, however, awareness of how their business may be abused, including risks

presented by legal persons, was more limited and underestimated in most sectors. Understanding of risk was stronger in DNFBPs that are a part of international networks.

532. Not all DNFBPs have conducted BRAs, but some were able to provide examples of higher risk scenarios and list activities outside their risk appetite. These were similar to those given for FIs.

533. Notwithstanding the use made of lawyers and accountants in company formation and subsequent administration (e.g., accounting and tax filing), there was little appreciation of the risks that may be present in the provision of company services. This is not consistent with the findings of the NRA that assess the ML risk of TCSP activities as high. Some lawyers acknowledged difficulty in finding out the BO of clients and trend for non-resident customers to set up companies without visiting Romania, mostly for the purpose of opening a bank account (though the number of non-resident accounts overall is not significant). TCSPs (which offer company formation and then accounting and tax filing services) demonstrated very limited awareness of high-risk scenarios. Lawyers and accountants, even those that are part of international networks, explained that they do not all provide structuring or tax advice about situations where Romanian legal persons are used in complex structures. Nevertheless, the AT considers that ML/TF risks in company formation and administration are under-estimated.

534. Legislation sets the maximum limit for use of cash in real estate transactions (property transfers) between natural persons at RON 50 000 (EUR 10 000). Notaries act as the main gatekeeper for real estate transactions in Romania, as, in practice, they check that transactions over the threshold are paid through a bank account. Notwithstanding the use of real estate in typologies and high risk attached to this area generally, notaries do not consider ML risks associated with their activities to be high, in part because of the role played by banks. Again, the view of the AT is that ML/TF risks are underestimated by notaries.

535. ML risks are not understood by terrestrial casino providers, despite the use of cash and high assessment of ML risk in the NRA. They consider only residents of high-risk countries visiting Romania to present a risk. On the other hand, online gambling representatives have a good understanding of risk in order to support a RBA.

536. Overall, the AT has a feeling that ML/TF risks are under-estimated by DNFBPs in cases where their customer also has a relationship with a FI, which is also responsible for conducting CDD on the customer. There is also over-reliance on the effectiveness of cash reports to the authorities (over EUR 10 000), and sense that risks linked to the use of cash are alleviated through delivery of such a report.

537. Most DNFBPs classify customers according to risk, taking account of factors such as links to high-risk countries and PEPs (also in company structure). The NOPCML-FIU reports that requests for clarification are most often received for: (i) identifying, assessing, and managing risk; and (ii) identifying and measuring risk factors to classify customers in appropriate risk categories and to apply CDD using an RBA.

538. The level of understanding of AML/CFT obligations is less sophisticated than for non-bank FIs, but satisfactory. Understanding of TFS-related obligations and practical knowledge of the obligations is satisfactory in entities that are parts of international groups (online gambling, lawyers, and accountants) and notaries. The NOPCML-FIU reports that requests for clarification are most often received for: (i) identifying the beneficial owners; (ii) identifying PEPs and sources of wealth; and (iii) implementation of internal controls and procedures. The NOPCML keeps information on the percentage of entities that have presented deficiencies in knowledge (and

application) of AML/CFT provisions leading to sanctions for its activities in 2019 and 2020. Understanding of AML/CFT requirements was high amongst lawyers and notaries (around 4% and 12% presented deficiencies), but lower for accountants and tax consultants (around 30% presented deficiencies).

VASPs

539. VASPs in general demonstrated a good understanding of ML/TF risks present at a country level and specific ML threats relevant to their business. Both business risk and customer risk are assessed, and risks associated with un-hosted wallets, tumblers, mixers etc had been identified (and at some level mitigated by using chain analysis tools). VASPs were able to provide examples of higher risk scenarios and list activities outside their risk appetite. These were similar to those given for FIs. Understanding of TF risks is less robust.

540. As the “travel rule” is not implemented in Romania, information is not held about beneficiaries of VA transfers, which prevents a full analysis of risks.

541. Notwithstanding that regulation of the VASP sector is recent, understanding of AML/CFT obligations is generally good.

5.2.2. Application of risk mitigating measures

542. FIs, DNFBPs and VASPs have implemented AML/CFT preventive measures to mitigate their ML/TF risks. The extent to which these preventive measures are applied varies between, and within, these sectors. Measures applied by banks to mitigate risks presented by legal persons, and by exchange offices generally, are not considered commensurate with risk.

FIs

543. Banks have developed sophisticated AML/CFT systems and controls (including monitoring). They typically apply preventive measures commensurate to risk. They build up profiles for their customers which are reviewed on an ongoing basis – frequency depending upon assigned risks. For increased and high-risk customers, more scrutiny is applied, such as: (i) obtaining approval from general management; (ii) requesting more information and documentation about the client/BO, and source of funds/source of wealth; (iii) obtaining input from the compliance function; and (iv) more frequent reviews of customer information.

544. PIs and EMIs have also developed AML/CFT systems and controls, commensurate to their risk (including monitoring). PIs also implement similar risk-based due diligence measures. The exception is the post office (MVTS – postal money orders), which applies only standard CDD measures to occasional transactions (transfers) above EUR 10 000. This is inconsistent with the law and FATF Standard.

545. The NBR has placed limits on access to high-risk financial services, such as the use of internet banking for external transfer operations, for medium-high- or high-risk customers. This follows the identification of certain gaps in the onboarding process of legal persons. The NBR worked with the Romanian Association of Banks to provide guidance on when restrictions should apply.

546. The situation varies between entities supervised by the FSA, where the insurance sector demonstrates application of the strongest risk-based systems (reflecting the relative size of the sector and foreign ownership profile). Overall, the NOPCML reports that risk is usually reflected

in internal procedures, but that entities with lower complexity, e.g., exchange offices and some lenders have a “less complex approach” to dealing with risk exposure.

547. Larger FIs do not apply simplified measures to any noticeable extent.

548. The use of cash in Romania presents a high risk given the size of the underground economy and more general preference for cash rather than card payments. In response, some banks have stopped all non-customer cash operations, and/or withdrawn from the provision of currency exchange or MVTs (as agent). Others have reduced their cash “footprint” and have closed or reduced the number of cash tills and ATMs available to customers. Others have imposed limits on the amount that may be paid into an account (between EUR 10 000 and EUR 15 000) over which it is necessary to disclose the source of funds. In case of withdrawals, the purpose of the withdrawal and confirmation that it will be spent in Romania is requested. Counter limits are also set beyond which management's approval is needed for the withdrawal (RON 100 000 (EUR 20 000) at one bank). Limits are placed also on withdrawals through ATMs.

549. Some PIs do not accept cash. Others that do request information about source of funds and purpose of the transaction (self-declaration) and require special approval above limits (EUR 2 000 at one PI). Transaction monitoring also manages risks related to cash in PIs (thresholds to stop a transaction, verify source of funds and to identify structured transactions). The EMI has set a limit of RON 10 000 (EUR 2 000) on cash transactions, and any amount above must be deposited on the e-wallet through a bank account.

550. The NRA highlights risks presented using shell companies, and STRs for banks feature repayments of intercompany loans, legal persons using the same registered office, and beneficial owners that do not have Romanian links. It is not clear that measures applied by banks to address this risk are sufficiently effective, and additional measures to deal with shell companies should be considered (e.g., requesting employment contracts, checking audited financial statements and tax returns, field visits, etc.).

551. In a case when a legal person or legal arrangement is considered to have a “complex structure” (which is a risk indicator), banks and other larger FIs take measures to address risk, including requesting additional information and documentation to identify each layer and to understand the structure. However, there are different interpretations of the term which leads to uneven implementation of mitigating measures. For example, a complex structure can be: (i) a structure with more than two ownership layers; (ii) a structure with shareholders from three different countries; (iii) any non-transparent situation; or (iv) a structure in which the beneficial owner does not have Romanian links.

552. Exchange offices handle mostly occasional transactions, where standard CDD obligations apply to transactions of EUR 15 000 or more. Below this threshold, simplified measures are required, including identification and verification. Recognising the risk that is presented using cash (including use by OCGs), some request additional information where the value of the exchange exceeds EUR 10 000, including information on source of funds. However, not all customers are prepared to disclose source of funds and so such requests (which do not have a legal basis where the threshold is less than EUR 15 000) are not enforced, limiting capacity to identify unusual activity. Such cases do not lead to the rejection of the transaction and most exchange offices consider submitting a cash transaction report to be a sufficient risk mitigation measure. Overall, mitigating measures applied in this sector are not commensurate with risks.

553. To mitigate risk, legislation permits exchange offices to change currencies only for natural persons. However, in most cases exchange offices do not identify whether the natural person they

are transacting with is acting on behalf of a legal person (including where the transaction exceeds the equivalent of EUR 15 000). At the same time, farmers, and construction workers (both identified as a high-risk sector in the NRA) were identified by exchange offices as customers with high volume transactions and may be acting on behalf of legal persons. This indicates that, despite the legal prohibition, currency may be being exchanged for legal persons.

DNFBPs

554. Most DNFBPs described applying only standard measures which do not necessarily take account of risk (except in limited cases established in the AML/CFT Law). In contrast, online gambling providers generally have well-structured risk management systems and one accountant that was part of an international network explained that it applies additional measures to higher risk customers.

555. In the real estate sector, transactions were often conducted in cash in the past, use of which has been discussed in the NRA. Restrictions on the use of cash (see Chapter 1) no longer permit this (above EUR 10 000). Only a notary can: (i) draw up a property deed by which a right in immovable property is transferred, modified, established, or extinguished; and (ii) send the application for registration of the deed. They are required also to determine and record the way payment is made for real estate. In practice, notaries have explained that they will exercise their functions only where there is evidence that consideration for the transaction has passed through a bank. This is an effective mitigation tool.

556. In the case of lawyers and accountants who are members of international networks, customers are often foreign companies, some having complex ownership structures. In such cases, a central group CDD function is involved in carrying out CDD measures, extending the number of sources of information that might otherwise be available, and in some cases, customers are already customers of the group, which simplifies the process.

557. Risks are effectively mitigated in the online gambling sector. There are no cash transactions – customers can deposit from a bank account, debit or credit card, or voucher (latter approx. 3%) - and no peer-to-peer transfers are allowed. Customers are natural persons and non-residents cannot register for services (unless they can provide a Romanian fiscal code).

VASPs

558. VASPs are applying measures that are commensurate with risk. Although the AML/CFT Law mandates the application of CDD measures only for occasional transactions above EUR 15 000 (which is not in line with the standard), VASPs have set lower limits. VASPs have developed different risk-based measures to mitigate ML/TF risks, e.g., different tools to analyse transaction chains to detect suspicious activity and, at some level, mitigate the risk of using mixers, tumblers, or the darknet. However, the fact that the “travel rule” is not applied is a limiting factor.

5.2.3. Application of CDD and record-keeping requirements

FIs

559. All FIs conduct CDD measures, with banks having the most comprehensive approach. CDD measures of exchange offices, the post office, some lenders, and some securities firms are not risk-based.

560. A large majority of the customer base in Romania is resident in the country. This means that CDD measures are generally applied on a face-to-face basis, though the Covid pandemic has

triggered a gradual increase in the number of FIs now offering online on-boarding. Reflecting advances in technology, the Romanian Digitization Authority now regulates and approves the use by banks, PIs, and non-bank FIs of remote identification processes using video means, without the need for the physical presence of the customer, and the NBR has set rules to be observed for remote on-boarding. According to the NRA report, 15 banks are authorised by the Romanian Digitization Authority to apply some CDD measures by video, which is designed to mitigate the risk of identity fraud. In practice, banks offer remote onboarding only to resident customers.

561. Outside the securities and insurance sectors, which use banks to market their products and where reliance can be placed on CDD information held at group level, there is little or no appetite to place reliance on third parties to conduct CDD or outsource such activities. In discussions with the securities sector, it was observed that one asset management company relies on a group company (bank) to conduct CDD on customers that are common to both.

562. Banks and PIs make full use of BO information held in the three domestic BO registries, along with other corroborative sources. For non-resident customers (or customers with non-resident control and ownership structures), they request foreign BO registry extracts, information on BO from lawyers and auditors (domestic and foreign) acting for the company, and use information available in open sources, including external data sources provided by outside third parties. In practice, banks noted difficulties in establishing BO in cases where structures are complex. Measures applied are satisfactory. No customers have bearer shares. In other sectors (except asset management companies), the AT considers that too much reliance is placed by FIs (even in higher risk scenarios) on: (i) self-declarations; and (ii) registers of BO which have not been demonstrated to be accurate and up to date.

563. In the securities sector, there are cases where customers that are regulated FIs hold investments (and cash) through an omnibus account on behalf of undisclosed third parties (i.e., act in a nominee capacity). This is true also in many European countries, but, in the case of Romania, there is no exemption in the AML/CFT Law to permit this. The supervisor did not recognise this practice and so has no expectations in this area, e.g., whether policies and procedures of the regulated FI should be obtained and reviewed, whether information should be collected on the profile of third parties, and how information on underlying third parties could be obtained without delay, if needed.

564. Inspections conducted by all FI supervisors have identified some deficiencies in the implementation of CDD requirements (as they have evolved in the period under assessment). These include failing to find out the beneficial owner, failing to verify the identity of the beneficial owner, and failing to update ownership structures and BO information. Whilst most inspections of banks by the NBR have findings in the application of CDD measures, the supervisor believes that these are isolated cases. However, some serious deficiencies in the application of CDD measures have been picked up during inspections, which have led to reviews of entire customer portfolios by some systemically important banks. Law enforcement investigations have also identified the use of bank accounts by criminals. Aggregated statistics (e.g., identifying type and seriousness of findings on application of CDD measures - by year) have not been presented and so, whilst the number of sanctions applied by the supervisor is not high, it is not possible to conclude on whether they are isolated occurrences or whether there are more general failings in this area. Meetings with prosecutors suggest that BO information held by banks has been reliable in around 50% of cases, and they have noted undetected use of nominee shareholders. However, these findings are not necessarily reflective of other relationships held by obliged entities.

565. Banks have implemented systems for: (i) screening CDD information against external commercial databases; and (ii) scenario-based transaction monitoring. Banks have implemented IT software to monitor transactions on an ongoing basis to pick up those that meet certain scenarios/criteria and, where there are anomalies, to generate an alert which starts an investigation. Banks were able to generally demonstrate that they have a good understanding of parameters and typologies used to set scenarios and criteria.

566. Inter alia, banks have dedicated monitoring scenarios for: (i) cash (mostly with limits between EUR 10 000 and EUR 15,000), including structured transactions; (ii) the use of accounts for transit purposes (similar incoming and outgoing payments); (iii) loans; and (iv) TF e.g., charity donations. Systems are used to identify customers that are legal persons using the same registered office address. Some have real time monitoring only above RON 100 000 (EUR 20 000). PIs also have automatic reporting systems, with scenarios linked to customer profiles, volume of transactions, and geographic area. Monitoring systems are more complex in case of MVTs operators licensed elsewhere within the EEA. According to the NBR, weaknesses have been identified in-house monitoring solutions for smaller banks, some PIs and EMIs in the past which have now been largely resolved.

567. Transaction monitoring systems of exchange offices are based on transaction volume and the monitoring system enables identification of structured transactions (including when the same individual conducts transactions in different branches). They prepare daily, weekly, and monthly reports.

568. Other non-bank FIs supervised by the NBR, some asset management companies, and insurance companies, have also implemented monitoring systems, but these systems are less sophisticated and robust, vary per sector/institution and, in some institutions, systems are not automated. Brokerage companies have not established automated transaction monitoring systems due to the small number of transactions that they handle (approach accepted by supervisor). One asset management company does not monitor transactions since assets are held within an omnibus account operated by its customer – a bank in the same group – for the bank's underlying customers (which are not disclosed to the asset manager).

569. In general, transaction monitoring by smaller FIs is largely based on thresholds and, to a lesser extent, behavioural scenarios to detect ML, and there is very little or no specific focus on scenarios aimed at detecting TF. In the majority of cases, transaction monitoring regarding TF appears limited to simply checking sanctions lists and links to customers and transactions from high-risk countries.

570. There have been few cases of FIs refusing to establish or terminate business relationships where they have not been able to complete the CDD process, although criteria were given that would lead to refusal or termination. The AT is concerned that this is not consistent with the extent of CDD measures that are being applied in practice. In the case of one bank that had rejected new business requests, reports were not sent to the NOPCML-FIU. The AT was not made aware of the rejection of customers by exchange offices.

571. CDD information, including BO information, is updated according to the risk level assigned to a customer. Usually this is: (i) six months to one year for high-risk customers; (ii) one to two years for medium-high risk customers; (iii) three years for medium risk customers; and (iv) four years for low-risk customers (time periods vary by institution). Trigger events are also considered for updating information. In 2019, the NBR identified – through on-site inspections - differences in the frequency of periodic updating of customer information between banks (e.g.,

cases where information was updated once in every ten years). It then subsequently identified outliers amongst other banks, which were then inspected. Formal recommendation letters were issued by the NBR which have led to the application of a unitary practice across the market.

572. In the majority of cases, FIs are keeping records for the necessary five-year period. Some institutions have been sanctioned by the NOPCML for breaches of record-keeping requirements.

DNFBPs

573. The extent to which CDD requirements are implemented varies between institutions and, in most cases, is not risk-based.

574. DNFBP business, except for online casinos, is predominantly conducted on a face-to-face basis. All apply basic CDD measures. For some DNFBPs (lawyers and accountants that are part of groups and notaries), information to determine the source of funds is also collected using questionnaires. However, this might not be sufficient to establish the true origin of funds in higher-risk scenarios, where corroboration may also be needed. TSCPs do not collect additional information linked to the risk level of a customer, which is a concern given risks associated with shell companies. Like non-banking FIs, in the case of resident companies, too much reliance is placed by DNFBPs on information held in the BO registries, though it has not been demonstrated that this is accurate and up to date. It is the view of the NOPCML that not all DNFBPs are placing full reliance on the BO registers for CDD purposes.

575. In the case of estate agents, CDD is only applied only to the initial customer wishing to sell or purchase property (in line with the deficiency noted under R.22 in the TC annex).

576. Land-based casinos apply CDD upon entry to the casino, though this is limited to verification of a customer through an identity document. Transaction monitoring is implemented to identify linked occasional transactions above EUR 2 000 and for CTR reporting purposes, and to ensure that customers are betting (and not merely purchasing and redeeming tokens). The submission of CTRs is seen as the main means of risk mitigation.

577. For online gambling, the level of CDD is linked to the value of transactions, e.g.: (i) where transactions exceed EUR 200 – the customer is required to provide an identity document (online); and (ii) where amounts deposited equal or exceed EUR 10 000 within a seven day period – the customer is required to provide a self-declaration on source of funds/source of wealth, which is verified by reference to open sources or additional documents (e.g. bank statements) Documents are checked (sometimes this includes those of third parties to prevent forgery). Only after verification of identity can a customer withdraw money. Risk-based limits are also set on transaction volumes.

578. Generally, very little to no focus is given to scenarios aimed at detecting TF.

579. No cases were identified of rejected applications or terminated relationships.

580. DNFBPs are keeping records for the necessary period.

VASPs

581. VASPs apply CDD measures. Most customers are natural persons (mostly Romanians and the rest from EU Member States), where significant use is made of remote and video identification, as approved by the Romanian Digitization Authority.

582. In the case of one VASP that offers its services though ATMs, customers can transmit amounts up to EUR 2 000 based on use of their mobile phone number to which a one-time

password is sent. For amounts above EUR 2 000 customers are redirected to the VASP's platform for registration. While registering on the platform, 'Veriff' checks the authenticity of ID document (in a matter of seconds). In addition, use is made of video identification (with facial recognition) to ensure that the identity document has not been stolen.

583. VASPs also request information on source of funds, though thresholds vary.

584. VASPs use chain analysis systems for tracing transactions and detecting suspicious transactions. VASPs have established thresholds for transactions, which generate alerts if incoming transfers come from an unknown wallet. After checking the wallet and requesting information on source, a risk score is produced. In addition to use of chain analysis, one VASP also makes use of the systems of its partner bank and liquidity provider (large global VA trader) to generate alerts. The absence of practical implementation of the travel rule has impacted to some extent on effectiveness of monitoring systems during the assessed period.

585. VASPs are keeping records for the necessary period.

5.2.4. Application of EDD measures

586. Generally, EDD for higher risk areas covered by core issue 4.4 are being effectively applied, with application strongest by banks and non-bank FIs. However, the basis for identification of PEPs in some sectors is not sufficient.

Politically exposed persons

587. The Romanian legal framework covers both foreign and domestic PEPs. However, one year from the date on which a person has ceased to hold an important public function, a covered FI is not required to treat that person as a PEP and the effect of this is that EDD measures are not applied to former PEPs that continue to present a standard or lower PEP risk – where PEP risk has not yet been fully extinguished. See R.12 in the TC Annex. The NRA presents cases of ML involving PEPs, and PEPs feature in STR typologies.

588. It is quite common for account opening documentation to request applicants to disclose any PEP connection when seeking to establish a business relationship (a self-declaration).

589. In addition, banks screen databases provided by third parties to identify links to individuals with PEP status -before onboarding and thereafter automatically on an ongoing basis. Checks cover the customer, beneficial owners, and all authorised signatories. Where a link is identified, approval is requested from general management before establishing or continuing business relationships, and source of funds and source of wealth are established. All categories of PEPs are assigned a high risk and EDD measures are generally applied, though the NBR has provided examples of deficiencies in this respect. In some other sectors, similar use is made of such databases. This includes PIs, EMIs, some exchange offices, some lawyers, and accountants (those that are part of an international networks) and VASPs, which also apply required EDD measures.

590. Where databases are not used, reliance is placed solely on a list produced by the National Integrity Agency Register which contains details of positions that are politically important in Romania. This means that family members and associates of such persons will not be identified in all cases. Use is made of open sources to identify foreign PEPs. In cases where FIs and DNFBPs do not implement risk based CDD measures, the AT is concerned that enhanced measures will not be properly applied even if PEPs are detected.

591. The authorities have drawn the attention of the AT to a requirement (Law 176/2010) for persons holding “important positions” (not only within state institutions) to complete and submit an asset declaration (in which their assets and liabilities and those of their spouse and children appear), as well as a declaration of interests in which information such as shareholder status in a company, membership of an NPO, political party or professional organisation can be found. Whilst this may be a useful tool for substantiating source of wealth and highlighting PEP connections, the source was not referred to during any meetings with the private sector.

Correspondent relationships

592. As highlighted under R.13 in the TC Annex, some correspondent banking requirements (assessing the mechanisms implemented by the respondent institution, obtaining sufficient information regarding quality of supervision, and requirements concerning payable through accounts) are automatically fulfilled by respondents in EU/EEA countries (including Romania), which account by number for most respondents⁶³.

593. Of the 35 credit institutions registered in Romania and branches of foreign credit institutions, 21 offer correspondent services, with activities concentrated mostly in three banks. None of the 21 banks offer “payable-through account” services and only three of them, which are part of international groups, have established “nested account” relationships (where the respondent allows its account to be used by another FI).

594. Banks have policies in place for accepting respondents and usually keep lists of non-acceptable respondent customers and transactions, correlating to the correspondent’s risk appetite.

595. Banks are collecting sufficient information about non-EEA respondent institutions (considered to present a higher risk) to fully understand the nature of their business activities and to be able to assess reputation and the quality of supervision. Management approval is always required to start such correspondent relationships and responsibilities of each institution are clearly documented. There is ongoing monitoring of each business relationship, including quarterly or six-monthly checks on respondents and reviews of sanction lists for underlying transactions. The NBR has not provided summary details of findings from inspections of correspondent banking and so it is not possible to corroborate findings from private sector meetings. However, examples were provided of two banks where deficiencies were not observed when testing compliance with correspondent banking requirements.

596. The extent to which VASPs may offer correspondent type relationships is not known.

New products

597. Banks conduct risk assessments before using new and developing technologies and prior to the launch of any new business/product. Compliance, IT, risk, and other relevant departments are involved in the process and mitigating measures are first put in place to address risk. The introduction of products such as mobile-banking and video identification have been risk assessed during the period under review, and because of risk assessments, offered only to Romanian

⁶³ However, more than 50% of transactional volumes (in terms of amounts) with respondents were related to credit institutions outside the EEA. The largest transactional volumes were recorded with respondent institutions in the UK and the US.

nationals. It is not uncommon for banks to also consult with the NBR prior to launching new product, practices, and technologies.

598. Non-bank FIs are aware of the legal requirements to assess risk, and compliance officers play an important role in the risk assessment process, ensuring application of appropriate due diligence obligations when new technologies/products are introduced.

599. Online on-boarding, in particular, has been an area of focus for the NBR, given wider use amongst entities that it supervises (banks, PIs and EMIs), and its inspections have considered how well ML/TF risk from increased use of technology is managed. Inspections have identified some technical issues, such as absence of dedicated training on use of online tools, and insufficient application of EDD measures. It is not possible for the AT to conclude on whether these are isolated occurrences or whether there are systemic failings in this area.

600. As explained above, the Romanian Digitization Authority has adopted specific requirements for the approval of video onboarding.

601. The use of new technology is not widespread in the DNFPB sector, apart from online casinos. The product base is also rather static. Accordingly, it is rare to need such a risk assessment.

Wire transfers

602. Payment services may be provided by: (i) credit institutions; (ii) EMIs; (iii) PIs (including MVTs operators licensed elsewhere within the EEA); and (iv) the post office (MVTs – postal money orders) - low value, generally domestic wire transfers.

603. Banks, PIs and EMIs are familiar with “wire transfer” rules. Wire transfer data (incoming and outgoing) is being screened by systems to make sure that it contains the required data on originator and beneficiary. In cases of missing information, an investigation is conducted which includes communicating with the originating institution to request additional information. In the first half of 2020, 462 wire transfers were rejected or suspended due to missing or incomplete mandatory information. According to information provided to the AT by banks, none had led to STRs.

604. Compliance by banks, PIs and EMIs with Regulation (EU) 2015/847 on information accompanying transfers of funds was assessed by the NBR in 2021. In most cases, shortcomings were linked to gaps in controls and procedures, e.g.: (i) absence of risk factors to decide whether to execute, reject or suspend a transfer of funds; (ii) absence of obligation to record all transfers with missing information to identify counterparts that repeatedly fail to provide necessary information; and (iii) absence of clear division of responsibilities. In addition, one PI had not established any procedures to implement provisions of Regulation (EU) 2015/847. The NBR has also highlighted a case dating back to 2016/2017, where a bank did not take measures to obtain complete information on the payer’s address.

605. There are no VA transfer rules issued in Romania and the activity of transferring VAs is not regulated. The extent to which wire transfer services are conducted by VASPs in Romania is not clear.

Targeted financial sanctions

606. A summary of findings in respect of the application of TFS for PF is presented under IO.11, which is relevant also for TF.

607. Generally, TFS sanctions relating to TF are applied to a satisfactory extent by FIs, with banks having more sophisticated controls when compared to other sectors. However, identification of associations and indirect links with sanctioned entities and individuals is a concern. DNFBPs and VASPs have less understanding of TF-related TFS requirements, and thus apply less robust controls - commonly linked to limited scope and/or frequency of screening checks - than those applied by the financial sector. .

High risk jurisdictions

608. All FIs and most DNFBPs demonstrated appropriate awareness of their obligation (recently revised) to apply EDD measures to business relationships or transactions involving high-risk third countries. Application of EDD measures varies per sector.

609. These obligations are linked to countries listed by the EC, and so there is greater familiarity with EU lists than countries subject to a FATF call to apply enhanced measures. Banks were, however, aware of the FATF “blacklist”, as were the majority of others when questioned further. Many banks and PIs (including MVTS operators licensed elsewhere within the EEA) apply EDD to a larger range of countries, having established internal high-risk country lists based on a range of information sources and criteria (e.g., EU lists, FATF “black” and “grey” lists, offshore centres, and group lists). Some of these lists included EU Member States.

610. When identifying customers connected to high-risk countries, obliged entities look at nationality and residence (including beneficial owners and counterparties). Banks and PIs (including MVTS operators licensed elsewhere within the EEA) also scrutinise transfers executed from and to high-risk countries. There is a low volume of incoming bank transfers from Iran, but otherwise no connections with North Korea or Iran. Systems automatically detect transactions, block them, and request additional information from the customer. The post office does not have automated system for monitoring postal money orders, but most international transfers are connected to Czech Republic and Moldova.

611. Enhanced measures applied by banks and PIs (including MVTS operators) include greater scrutiny of identification documentation, establishment of source of funds and/or source of wealth and enhanced ongoing monitoring of customer behaviour and transactions. Other FIs, including exchange offices and the post office, did not clearly articulate what additional measures would apply, though exchange offices admitted having only a very low number of customers, mostly students, from high-risk countries.

612. The application of EDD measures by DNFBPs is limited since many do not have customers connected to high-risk countries. Customers in the online gambling sector are limited to Romanian residents. One notary mentioned a relationship with an Iranian customer that had led to a STR.

613. The possibility of identifying a nexus to a high-risk jurisdiction is limited for VA transfers because the “travel rule” has not yet been implemented.

5.2.5. Reporting obligations and tipping off

614. All obliged entities are aware of the circumstances in which there is a requirement to submit an STR to the NOPCML-FIU and requirement not to tip-off a customer where such a report is made. However, there is evidence of: (i) under-reporting in some sectors – with reports concentrated in four sectors; and (ii) evidence of reporting without substantial analysis - including amongst banks.

615. A table of reports made by obliged entities and other sources is provided in table 3.2 in Chapter 3 (IO.6). The number of STRs linked to TF is said to be low, but the exact figure is not available.

616. Reports are made directly by the compliance function, without need for approval from management, with “front office” support. In practice, there appears to be no confusion amongst obliged entities between the various types of reports that must be made to the NOPCML: (i) STRs; and (ii) threshold-based reports – CTRs, ETRs and FTRs – see IO.6. The NOPCML-FIU has given examples of where both a CTR and STR have been filed in respect of the same transaction. However, as noted at Chapter 3 (IO.6), a significant mismatch is observed between numbers of STRs and other types of reports in several sectors, including those presenting higher risk, indicating that there may be a tendency to file threshold-based reports instead of STRs (see also below).

617. Banks generate the highest number of STRs (accounting currently for around 70% of the total), which reflects the sector’s materiality in the Romanian economy. Banks that are part of a larger foreign group generally report more due to the extended range of services offered, larger customer base, and stronger controls in place. Chapter 3 (IO.6) also identifies some defensive reporting by branches of foreign banks. The principles of reporting of suspicious activity and attempted suspicious activity are generally well understood by banks and those met by the AT on-site were able to give typologies for filing linked to: (i) unusual or large cash transactions; (ii) companies with non-resident beneficial owners using accounts for transit purposes; (iii) repayment of inter-company loans (as a tax evasion typology); (iv) use of money mules; (v) fraud; and (vi) cyber-crime.

618. Provision of these typologies suggests that monitoring systems in banks are identifying unusual activity, and that reports sent are not based purely on adverse information, e.g., country or PEP matches, or media. However, this has not always been the case, with a large proportion of NBR sanctions following inspections in 2018 and 2019 linked to failure to report. More recently: (i) in 2019/2020, the NBR conducted targeted reviews of banks, following concern about “repeat reporting”⁶⁴ – see case study in Chapter 6 (IO.3); and (ii) in 2021, based on feedback provided by the NOPCML, the NBR called on banks to improve their reporting procedures and processes, including from the perspective of proper substantiation of indicators of suspicion. The problem identified with repeat reporting is that banks: (i) have been content to make reports without grounds for suspicion; or (ii) continue business relationships despite the presence of indicators of suspicion. Due to increased supervisory activities linked to reporting (including use of automated systems) since 2017, the share of STRs submitted by banks has risen from 48% in 2017 to just over 70% in 2021. There has also been an increase in the number of ex ante STRs (recognised in the NOPCML-FIU report for 2020) because of supervisory action.

619. PIs, including MVTS operators, account for the second largest number of reports (accounting for around 20%). This includes MVTS operators licensed elsewhere within the EEA (dominated by two global players), and number reflects the risk inherent in the sector (medium-high risk assessment in NRA) and use noted of this sector in the NRA by OCGs. However, the number of STRs has fallen since 2017, which has not been satisfactorily explained. The post office (MVTS – postal money orders) submits only CTRs.

⁶⁴ Following an initial report which was not acknowledged by the NOPCML, subsequent activity was then also reported (without grounds for suspicion).

620. Notaries account for the third largest number of STRs (accounting for around 4%). Whilst the sector is rated as having only a medium ML risk in the NRA, the number reflects the important gatekeeper role that is played by the profession in the real estate sector, which is assessed as presenting a high risk and which is seen in ML typologies. The number of STRs from the sector has declined considerably in recent years, which has been attributed by the NOPCML-FIU to changes in behaviour and fall in number of construction projects – both because of the Covid pandemic (though this explanation has not been supported by any statistics, e.g., number of notarised real estate transactions). The main typologies presented by notaries relate to use of cash and the value of property transactions (where sums paid are higher or lower than market value), both of which link back to real estate.

621. Exchange offices account for the fourth largest number of STRs. However, the number of STRs seems low compared to: (i) the number of CTRs submitted by the sector; and (ii) risks linked to handling of cash and size of the underground economy. In 2021, 27 534 cash transactions exceeding EUR 10 000 were reported to the NOPCML-FIU compared to 21 STRs. The NOPCML-FIU puts the decline in the number of STRs down to awareness raising since 2017 and the pandemic (changes in behaviour). Other factors are also relevant: (i) difficulty in obtaining information on source of funds for occasional transactions below EUR 15 000 (see above); and (ii) over reliance placed on reporting cash transactions as a method of mitigating risk. The main typologies presented by exchange offices relate to the value of transactions and changes in the behaviour of occasional customers (large currency exchange following lower amounts over an extended period).

622. The number of online gambling STRs, included amongst reports from other gambling service providers, is increasing and reflects the introduction of a reporting requirement in 2019. It is possible that the actual number of STRs should be higher yet, since one online casino indicated that it made reports through its parent and not to the NOPCML-FIU. Between 2019 and 2021, eight STRs were reported by VASPs, notwithstanding that there was no obligation to make a report until July 2020. It is not possible for the AT to estimate the extent to which suspicious activity is not being reported in this sector.

623. Other sectors account for a negligible amount of STRs. This is most surprising for lawyers and accountants, which provide TCSP activities (given risks identified in the NRA, such as use of nominees). These sectors are considered further below. Similarly, the number of reports from estate agents is not in line with the high assessment of ML in the real estate sector. Whilst a negligible number of STRs have been made by terrestrial casinos, they account for the third largest number of CTRs, and the AT considers that this is indicative of: (i) over reliance that is placed on CTRs to manage risk; and (ii) under-reporting in the sector.

624. The reason for the low number of reports in the legal sector is linked to a possible conflict between the requirement to report under the AML/CFT Law and overriding duty of secrecy owed to customers under the Law for the organization and practice of the lawyer's profession (Law 51/1995). Article 11 of the latter states that a lawyer shall have the obligation to keep professional secrecy and Article 45(6) states that unlawful disclosure of confidential information constitutes a crime and is punishable by imprisonment from one to five years, unless legislation expressly stipulates otherwise, which it does not. Indeed, failure to report suspicion of ML/TF is not expressly provided as a criminal offence. One lawyer also acknowledged rejecting a suspicious client but not making a STR, as the transaction had not actually been carried out. As mentioned above, it appears also that the legal sector downplays the risk that is involved in providing TCSP activities.

625. The number of reports from accountants is also considered to be low considering that it is: (i) mandatory to use a Romanian accountant to file annual financial statements and accounting reports with the authorities; and (ii) common for accountants to support the submission of tax returns. In the case of non-resident companies, it was explained to the AT that the accountant used would be a professional external accountant.

626. No STRs have been reported by TCSPs, which is not compatible with the number operating in Romania (around 750 – see Chapter 1) or high assessment of ML risk in the NRA.

627. As mentioned above, some asset managers hold investments and cash (in omnibus accounts) for regulated FIs – both in Romania and abroad – on undisclosed third parties. Whilst those regulated FIs will be able to make a report, they may not have the same experience as the asset manager to identify suspicious activity, and so some reports may not be made that would otherwise have been delivered had the asset manager held all CDD information.

628. Outside the banking sector and some MVTs operators, no specific focus is given to scenarios for detecting and reporting TF, except for connections to high-risk countries.

629. Based on interviews with obliged entities, the AT considers that other factors also contribute to low reporting volumes outside banks, PIs and notaries: (i) lack of awareness of risk factors and relevant “red flags” that indicate suspicion, particularly regarding TF; (ii) lack of qualitative feedback from the NOPCML-FIU on STRs; (iii) lack of typologies for some prominent offences seen in Romania; (iv) insufficient understanding of risks to which individual businesses and sectors are exposed; (v) insufficient application of RBA in some sectors (including exchange offices), which limits data collected and opportunities to monitor activity against profiles; (vi) historical deficiencies in monitoring systems at smaller banks and some PIs and EMIs; and (vii) insufficient attention given to reporting attempted business relationships/transactions.

630. Since 2021, quantitative feedback on STRs has been provided by the NOPCML-FIU on an aggregated basis. This shows for each obliged entity: (i) total number of STRs; (ii) number of suspended transactions; and (iii) whether reports have been disseminated. This allows an obliged entity to see how its record on reporting compares to its peers. The NOPCML-FIU states that between 10% and 15% of STRs may be described as “defensive” (STRs where there was no substantial analysis forming the basis for a report).

631. There have been no criminal investigations or prosecutions for failing to report, but this area is not actively explored by the NOPCML-FIU.

632. Obligated entities generally displayed good knowledge of the obligation not to tip-off and ensure compliance by staff through internal policies and procedures, and training initiatives. Some have prepared “scripts” to assist customer relationship managers deal with queries and complaints where transactions are processed. The NBR has identified one case in 2020 that is not related to an STR, but to an NBR recommendation to pay special attention to a particular customer, where that recommendation was disclosed to the customer (due to operational failings). This led to two recommendation letters being sent to all its supervised entities, the effect of which has been considered in subsequent inspections. The case was also referred to the POHJCC. The NOPCML has confirmed that it is not aware of any cases of tipping off, but this area is not actively explored by the NOPCML-FIU.

5.2.6. Internal controls and legal/regulatory requirements impending implementation

633. Except for sole practitioners, obliged entities have documented their internal controls and procedures, which are approved by senior management. They were aware of the new AML/CFT Law and underlying regulations and had updated their internal rules accordingly. In the case of banks, these updated procedures had been shared with the NBR. Internal controls cover the operation of the AML/CFT function.

634. Banks are now giving high priority to AML/CFT functions to support compliance with AML/CFT requirements. In most cases, one of the members of the board (for example, risk director) is responsible for compliance (AML Officer), and reports to the chief executive (general director). In recent years, the number of staff employed in compliance has increased and there has been greater use of technology. The compliance team has access to all information necessary for its function. The compliance system is generally checked on an annual basis by internal audit. Topics picked-up for banks have included: (i) new requirements in the AML/CFT Law; (ii) checking accuracy and completeness of STRs; and (iii) periodic reporting to senior management on AML/CFT matters.

635. Banks have mandatory training for all staff (which includes TFS, anti-bribery and corruption training and tipping-off). There is additional training for staff with AML/CFT responsibilities, and one bank emphasized the importance of training the “first line of defence” to assure data quality. Banks also have screening programmes for new employees. Hiring processes include requesting references, criminal record checks, and anti-fraud checks.

636. The NBR has found deficiencies in the application of controls and procedures by banks, including insufficient resources, unclear responsibilities, and gaps in training. However, according to the NBR, those deficiencies are not prevalent in the sector.

637. Internal AML/CFT controls of large non-bank FIs, including PIs, online gambling providers and VASPs are also based around “three lines of defence” (front-line staff, compliance, and internal audit) and generally well-resourced. A systematic management information reporting process is implemented in most institutions. PIs that are part of a group are covered by the group audit function.

638. The internal control systems of smaller FIs and DNFBPs are less sophisticated. Smaller FIs and lawyers are providing initial and refresher training. Exchange offices have also implemented employee testing after training. Given shortcomings observed in CDD measures and reporting in some sectors, it does not seem that internal controls, procedures and training are tailored to the specifics of the sector in which they operate (a point confirmed by the NOPCML). Exchange offices and real estate agents apply screening procedures before hiring: a person must present a clean criminal record certificate. VASPs interviewed mentioned that one full time and one part time employee is dedicated to AML/CFT issues. The NOPCML has found that compliance resources are greatest in those entities that are part of groups. Most deficiencies identified by the NOPCML in this area during inspections are minor.

639. In smaller FIs, mostly supervised by NOPCML, there is often no independent audit function to test the system – in line with the statutory exemption that is available. See R.18 in the TC Annex. This is not the case for some exchange offices, online gambling and some lawyers/accountants that are part of a group.

640. Agents of PIs and EMIs are generally covered by the internal control framework of the principal. E-money agents are checked on a quarterly basis. MVTs operators licensed elsewhere within the EEA have strict policies for their Romanian agents, including checks of ownership.

641. Romanian institutions have very limited presence abroad, with only one credit institution having branches in other countries (Italy and Moldova). Following inspections in 2019, the NBR called for improvements to the group AML/CFT audit programme, including those identifying and managing the level of risk at branch level.

642. Despite the shortcomings noted under R.18 in the TC Annex, obliged entities that are part of a group uniformly stated that there is nothing that inhibits information sharing between group entities, including on customers and STRs. The NBR has identified one case where a bank's internal controls and procedures did not provide for sharing of information within the group.

Overall conclusions on IO.4

643. Generally, banks and PIs adequately apply AML/CFT preventive measures commensurate with risk and report suspicious transactions. Whilst there is evidence of reporting without substantial analysis by banks, the NBR has taken appropriate action in this respect. Significant weighting has been attached to these findings since these are the most important sectors, particularly banking which dominates the financial sector.

644. Whilst the notarial profession under-estimates ML risk, notaries play an important role in verifying that the proceeds of real estate transactions over set thresholds are handled by banks. Shortcomings are mitigated therefore through the application of parallel preventive measures. The profession also accounts for the third highest number of STRs, which reflects positively on the application of preventive measures.

645. The position in sectors that have been weighted as highly important (exchange offices, lawyers, accountants and TCSPs) is different, and some important shortcomings highlighted in: (i) risk understanding, where risk is under-estimated; (ii) application of CDD measures; and (iii) reporting of suspicion of ML/TF, where there is evidence of under-reporting. Whilst these sectors are highly important to the extent that there is a risk that cash may be laundered or legal persons formed and operated for criminals, the level of transactional activity is much lower than for banks and PIs.

646. Whilst not all VASPs are subject to the AML/CFT Law, the sector – weighted as highly important – already has a relatively good understanding of risk and AML/CFT requirements and is applying preventive measures that are commensurate with risk.

647. Taking account of these factors, **Romania is rated as having a moderate level of effectiveness for IO.4.**

6. SUPERVISION

6.1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 3

- a) The NBR and FSA apply effective “fit and proper” entry checks for FIs under their supervision (including broad consideration of reputation of the applicant), as well as ongoing scrutiny of licensing requirements. More limited market entry controls are in place elsewhere, including for VASPs, which are less effective and present some vulnerabilities. There is no authority with a clear responsibility for proactively identifying unlicensed banking or payment services activity.
- b) Overall, financial supervisors and the NOPCML demonstrate a fair understanding of ML/FT risks in the country and risks connected with sectors under their supervision, this understanding being strongest in the NBR. Overall, a more granular analysis is needed of inherent risk at sectoral and institutional levels. Whilst a significant quantity of information is available to financial supervisors (particularly the NBR), its use is not yet sufficiently systematic to support a comprehensive, comparable, and on-going understanding of risks. ML/TF risk understanding of DNFBP supervisors other than the NOPCML is more limited at sectoral level and SRBs do not assess risk at individual institution level.
- c) The most robust AML/CFT RBA is applied by the NBR, which supervises the most material FIs. It has recently significantly increased staff numbers and introduced organisational changes to remedy some previous bottlenecks. NBR engagement with supervised entities, mainly banks, is very frequent and the NBR uses a broad range of supervisory instruments, including targeted “horizontal” reviews. Whilst the NBR’s approach is effective to some extent, it operates on a rather *ad hoc* basis, and appears to lack a general direction and high-level strategy in the AML/CFT field.
- d) ML/FT risks are taken into consideration to some extent by the FSA and the NOPCML, the latter relying significantly on sectoral risk understanding. The FSA continuously monitors its supervised entities but undertakes AML/CFT supervision together with supervision of prudential resources and conduct of business, and AML/CFT does not appear to be a priority area. Its supervisory approach is structured but rather formalistic. The activities of the NOPCML are seriously impacted by the low number of staff involved in supervision compared to the number of supervised entities. Despite these constraints, it has made a significant impact; mainly preferring a broader outreach to the detriment of depth of its actions. Other DNFBP supervisors have not yet commenced AML/CFT supervision or check AML/CFT obligations within conduct rules. The supervision of VASPs has only recently started. Planning of TF-related TFS examinations by the NBR is driven by general ML/TF risks (of which TFS is a component) and picked up under AML/CFT controls by the FSA.
- e) Remedial measures are applied as a rule by the NBR, FSA and the NOPCML when breaches are identified, and they are duly followed-up. Supervisors of FIs have also applied, in practice, a broad range of sanctions, including against managers. Sanctions have not been, however, applied consistently and their effectiveness, in general, has not been demonstrated.

This approach has changed in the FSA to a more systematic approach; though this change is too recent to assess its impact.

f) The diligent follow-up of remediation plans by supervisors has led to an increase in compliance in particular institutions. The NBR and the NOPCML have demonstrated a broad impact on compliance across the sectors that they supervise; the latter mainly through its awareness-raising activities. However, only the NBR has been measuring (to some extent) the impact of its activities and neither supervisor measures the success of what they do at a more strategic level.

g) Overall, a clear message of AML/CFT obligations and ML/TF risk is being promoted in Romania. Limitations in risk understanding affect the latter.

Recommended Actions

Immediate Outcome 3

a) Market entry requirements and procedures should be reviewed for all sectors not supervised by the NBR and FSA to ensure that criminals and, in particular, associates of criminals, cannot become controllers or owners of obliged entities, at market entry or at a later stage. Responsibility for identifying unlicensed activity should be formalised in all sectors, in particular, for payment services.

b) To support respective RBAs, the NBR, FSA and the NOPCML, should undertake more comprehensive and granular analysis of ML/FT risks inherent to the sectors supervised and connected to different products, customers, and geographies. The NBR should take further efforts to put to full use the extensive information it has at its disposal, whilst the other supervisors should take steps to periodically collect sufficient relevant data. Supervisors should revise their risk assessment procedures keeping in mind that these should be objective and consistent.

c) Other DNFBP supervisors should significantly enhance their overall understanding of sectorial and individual institution risks.

d) The NBR should continue to fine-tune processes to ensure continuous supervision, whilst also providing for more sophisticated calibration of supervisory actions with risk (including for TFS). A stable, high-level, long-term strategy should be put in place, together with more immediate goals to ensure that supervisory priorities are sustained.

e) The FSA should recognise AML/CFT as a key priority. AML/CFT processes (including for TFS) should be applied more systematically, and a more preventive approach should be adopted in line with enhanced understanding of sectorial and individual institution ML/FT risks.

f) Staffing numbers in the supervision department of the NOPCML should be reviewed and increased to align with statutory responsibilities. Even with further staff increases, a more robust RBA should be developed.

g) The NBR, FSA and the NOPCML should consider developing automated processes to support data analysis and risk assessment. These should increase time and resource effectiveness in processing relevant information, and enhance transparency, consistency, objectiveness, and comparability, whilst limiting the impact of supervisory judgement. They should include also processes to keep track of, monitor and evaluate identified shortcomings

and follow-up actions with a view to understanding sectoral vulnerabilities and, in addition, targeting and measuring supervisory impact.

h) Where joint supervisory responsibilities exist, combined resources and experience should be reviewed by supervisors to ensure that these are sufficient and that they are effectively applied. Cooperation, coordination, and information sharing amongst supervisors should be promoted further, in particular where different supervisors are responsible for licencing and supervision, and between the NOPCML and other DNFBP supervisors.

i) All supervisors should develop the AML/CFT knowledge and expertise of staff as a priority for new hires, as well as continuously for all responsible staff involved in AML/CFT supervision.

j) The NBR and NOPCML should review and revise their sanctioning policies to ensure that proportionate and dissuasive sanctions are applied when relevant in a transparent and consistent manner. This applies also for the application of sanctions in cases of breaches identified by SRBs. The FSA should monitor the effectiveness of its new approach to sanctioning.

k) Supervisors, in particular the NOPCML, should continue out-reach activities. Consideration should be given to: (i) including a stronger focus on links between observed ML/TF risks and corresponding obligations; and (ii) practical aspects of implementation.

648. The relevant IO considered and assessed in this chapter is IO.3. The Recommendations relevant for the assessment of effectiveness under this section are R.14, 15, 26-28, 34, 35 and elements of R.1 and 40.

6.2. Immediate Outcome 3 (Supervision)

649. As described in Chapter 1, the most important sector in Romania is the banking sector, followed by PIs and sectors relevant as gatekeepers for real estate transactions (notaries) and creation and management of legal entities (lawyers, accountants and other TCSPs). In particular, banks play a key role not only due to the size and volume of transactions that they process, but also as a result of legislative limitations on the use of cash, which mean that banks must now be used in the majority of transactions. The insurance and e-money sectors are considered less important given the limited use of their products.

650. For detailed information concerning supervision of TFS-related requirements, please refer to the assessment in the relevant section under IO.11.

Organisation of supervisors

NBR

651. AML/CFT supervision in the NBR is undertaken within the Supervision Department. The NBR put in place significant organisational changes in 2021 and now has a dedicated AML/CFT Supervision Division (hereinafter “AML/CFT Off-Site Division”), which has 26 staff members. This division is divided into four units – credit institutions, other FIs, TFS, methodology and international cooperation. On-site supervision is undertaken by a separate team, which is included in the prudential on-site division – the Inspection Division. Within this division, there are dedicated AML/CFT staff (six, including an AML/CFT team coordinator) which undertake only

AML/CFT inspections and cooperate extensively with the AML/CFT Off-Site Division. Further support is provided by the Legal Advice on Supervisory Acts Office (legal department) which reviews supervisory reports and summaries.

652. Apart from organisational changes, the number of AML/CFT staff at the NBR has grown significantly (from 9 persons in 2009, 19 in 2017 to 32 in 2022). Whilst the number of staff appears sufficient, there are doubts about their experience (though previous experience in the AML/CFT field is a factor during employee selection) and expertise (due to limited training).

653. Romanian institutions have very limited presence abroad with only two banks having branches abroad (Italy and Moldova). The NBR has acted to cover group risks connected with these branches (for example in the Moldovan branch, an on-site inspection was undertaken in 2019).

FSA

654. The FSA undertakes AML/CFT supervision together with prudential and financial conduct supervision. The division of duties within the FSA is by sector, so supervision is undertaken by three separate divisions: (i) insurance and reinsurance; (ii) private pension funds; and (iii) capital market and intermediaries. AML/CFT supervision is supported by a dedicated AML/CFT “hub” of ten staff) which collects relevant AML/CFT information to complement supervision, and coordinates with other departments in terms of interpretation and expertise.

NOPCML

655. The NOPCML has a dedicated supervisory department consisting of 12 staff members. These are divided into three units: (i) off-site (5); (ii) on-site (5); (iii) VASPs (1), and there is one director. The number of staff is significantly disproportionate to the number of supervised entities for which it has responsibility.

656. Its difficulties are compounded by having oversight responsibilities for sectors that are not covered by the FATF Standards (and so not discussed further in this report), e.g., auditors, authorised valuers, and, until recently, NPOs (from the available data, this could be over 200 000 entities). These additional responsibilities, which are not supported by risk assessments, have significantly affected the NOPCML’s supervisory capacity.

Coordination

657. There is no general coordination mechanism in place to support consistency in supervisory approach between the three main supervisors.

658. The NBR and the FSA have a general MoU in place covering cooperation in relation to supervision and regulation of the capital market. In practice, the authorities have confirmed that cooperation takes place in all areas of activity of both institutions. Specific examples were given predominantly in the context of licensing and fit and proper assessments, but frequent informal communication was mentioned also in other areas, mainly policy.

659. As explained below, the NOPCML has entered into agreements in the course of 2022 with SRBs and the NGO, which also have responsibility for AML/CFT supervision of DNFBPs. Prior to these agreements, it appears there was limited cooperation or coordination with other supervisors on shared supervisory responsibilities.

6.2.1. Licensing, registration and controls preventing criminals and associates from entering the market

660. For the majority of FIs, robust and comprehensive fit and proper controls are applied. Some controls are applied to prevent criminals from being accredited as DNFBPs, and owning or controlling DNFBPs and VASPs, nonetheless, the legal requirements and/or controls applied in practice are less effective and some vulnerabilities are present, e.g., no measures are in place regarding associates of criminals, there are gaps in the types of offences that may be taken into account, and limited entry where professionals practice through firms.

Financial institutions

NBR

661. The Licensing Department oversees initial licensing and the Supervision Department of fit and proper controls in case of changes in management or qualifying ownership or subsequent changes in circumstances.

662. At the time of an application for a licence, the Licensing Department checks the absence of a criminal record for shareholders (with a qualifying shareholding) and management of the applicant – both in Romania and other relevant countries (based on nationality and previous work experience). Except for NBFIs, the Licensing Department also consults internally with other departments on whether adverse information is held, including the Inspection Division. Information is routinely sought from the NOPCML-FIU and generally requested also from the FSA, RIS, and the Police. In addition, the NBR contacts relevant foreign supervisors whenever the applicant has had foreign work experience in the financial sector. Media and other sources are consulted. These checks cover on-going investigations, association with criminals, and concerns about previous activities, at applicant level and for shareholders and management.

663. In the case of credit unions, checks are applied only to management, but not to members (which do not exercise any direct control over the business). These checks are considered proportionate.

664. There have been no applications for a banking licence in the past 13 years. As concerns PIs and EMIs, 19 licence applications were assessed in the period under review – with one rejection due to incomplete documentation and not for AML/CFT reasons. Many other applications were withdrawn – due to significant changes called for by the NBR to ensure compliance with relevant legislation (missing documents, incomplete presentation of activities, unrealistic business plan, etc.), rather than concerns regarding criminality.

665. For NBFIs, five applications for the General Register were rejected (in four cases due to the lack of good reputation and in one case insufficient experience of manager).

Case study 6.1: Refusal of a NBFI licence

In 2019, an applicant for a NBFI licence had as an appointed manager a person with on-going criminal proceedings for forgery. The NBR rejected the application based on the inadequate reputation of its manager. The applicant appealed the decision by invoking the presumption of innocence. The appeal was rejected. After the first instance acquittal of the manager in 2020, the application was re-submitted and rejected; the rejection was again appealed, and the appeal rejected.

After the acquittal decision for the manager became final (since it could not be proved beyond reasonable doubt that the defendant was the person who committed the forgery), the applicant

submitted a third application to the NBR. The application was rejected again due to reputational concerns, given that the manager had been subject to numerous criminal and civil cases, even though not convicted for committing a crime. In addition, the NBR also took into consideration that, during the assessment of the applications, the manager had provided contradictory information. The applicant appealed, and the appeal was again rejected.

666. Subsequent changes in qualifying shareholdings and management (treated in the same way as at time of licensing) and changes in circumstances are reported to the NBR by licensed entities, except for: (i) NBFIs, where all changes are reported *ex post*; and (ii) credit unions, where subsequent changes are not reviewed, which hinders effectiveness of the system.

667. The NBR makes use of on-going supervision, including onsite inspections, and media and other open sources to verify that changes are reported. For banks, each inspector oversees one or two banks and, hence, has close ongoing contact with them and supervisory action is frequent. The AT does not have concerns in this regard. For FIs other than banks, one team oversees all institutions and, hence, ongoing supervisory contact is less. PIs and EMIs are also obliged to undertake every two years a self-assessment concerning key function holders (not shareholders) and submit a copy of the assessment to the NBR. For NBFIs, ongoing checks are less robust, and reliance is placed mainly on self-reporting. Nonetheless, the NBR has identified three cases (two in 2017 and one in 2018) of non-reported changes, demonstrating the effectiveness of its activities in this regard. Applications for changes have been withdrawn or rejected, but these have been based on concerns on expertise rather than criminality or reputation.

668. The NBR also considers AML/CFT aspects when deciding on applications to merge and acquire banks and rejected in 2018 a foreign bank's application to acquire a qualifying holding in a Romanian bank due to concerns on the quality of the applicant's AML/CFT procedures.

669. The NBR does not have duties or legal empowerment to identify unlicensed providers of financial services or take steps against such providers. Should it identify such activities, it would report them to LEAs as a potential criminal offence. Other authorities would also report such illicit activities if encountered within their duties (the Fiscal Administration or the National Authority for Consumer Protection). It appears, however, that there is no authority with a clear responsibility for pro-actively identifying unlicensed activity (including banks and payment services).

FSA

670. The authorisation unit of the respective FSA department assesses each application for new licences and subsequent changes of owners of qualifying holdings and management, as well as subsequent changes in circumstances. There is significant cooperation with the relevant supervision unit of the FSA department, in particular regarding subsequent changes.

671. The authorisation unit checks the absence of a criminal record in Romania for shareholders and management, and in other relevant countries (based on nationality and previous work experience). Should the applicant have a connection to a FI supervised by the NBR, the FSA also requests information from the NBR. When deemed necessary or relevant, the unit also requests information and/or an opinion from the NOPCML-FIU, though not in all cases. In addition, foreign supervisors are contacted in case of foreign work experience in the financial sector. Complementary tools are also used, such as open-source information (including media) and private providers.

672. There have been no applications for a licence in the period under evaluation. The FSA has, however, processed requests for changes in qualifying shareholding and management and there have been rejections linked to concerns surrounding criminality or reputation. Whilst one such decision related to on-going proceedings has been successfully challenged in court, similar decisions have been sustained.

Case study 6.2: Refusal of application to approve member of board

The FSA refused an application for a new member of the board of directors in a self-managed investment fund because the applicant had been subject to an on-going criminal investigation for suspicion of forgery of documents. The FSA had refused the application before an indictment had been filed, because the applicant did not comply with the requirements for reputation, honesty, and integrity.

The FSA decision was appealed by the applicant at court, which decided in favour of the FSA.

673. Changes in shareholders and managers, and in circumstances, are reported by supervised entities and are monitored through on-going supervisory activity, including regular monitoring of media and open sources. In addition, the status of management in the capital market is proactively reviewed during on-site inspections (which take place at least once every three years). Further, contracts for management in the insurance sector have renewable terms, usually no longer than every four years, and are therefore reassessed through renewed applications.

674. The FSA has a specialised unit to identify potential illicit activities and investigates petitions received by the FSA from the public (consumers). When needed, other competent authorities, national or foreign, are approached, and when there is an indication of criminal activity competent LEAs are informed. Alerts and public information are issued in such cases. In most cases, it is not possible to take further action since unauthorised activity is perpetrated outside the EU or countries covered by a cooperation agreement.

The Interinstitutional Committee under the MoF (the Committee)

675. The Committee has responsibility for licensing exchange offices. It checks for the absence of a criminal record for significant shareholders and management of the applicant (together with other matters, such as fiscal record), but does not take into account the reputation of the applicant, nor does it consider associates of significant shareholders and management. The authorisation of exchange offices is renewed every five years or earlier when information comes to the knowledge of the authorities, for example when changes are reported. However, changes are not proactively monitored.

676. The Fiscal Administration and LEAs are empowered to act against unlicensed provision of foreign currency exchange services. During the period from January 2018 to January 2020, six contraventional sanctions were applied in the form of fines totalling RON 62 000 (EUR 12 500) and revenues totalling RON 480 013 (EUR 97 500) were confiscated. Nonetheless, no information was provided on the specific steps taken or systematic approach where action was taken in the period under assessment in this regard.

DNFBPs and VASPs

677. There is no national or international cooperation regarding market entry of DNFBPs.

NGO

678. As explained under c.28.1 in the TC Annex, the NGO has all the necessary powers to prevent criminals from holding interests in entities under its supervision, but not all those

holding a management function or operators of casinos (where different). Regarding management, only “legal representatives” are covered – persons empowered to act on behalf of the entity. Only convictions for criminal offences can be considered, so reputation and associates of criminals are not considered in practice. Criminal records are checked in respect of foreign countries where this is relevant. No information has been provided about the use of any other sources.

679. Whilst entities are expected to notify changes post licencing, the NGO does not undertake checks in this respect and, hence, does not ensure that changes are identified.

680. Between 2019 and 2021, there were four applications to operate a terrestrial casino and 14 for an on-line casino. The NGO did not provide any further information concerning earlier years. The NGO has not refused any application for a licence or notified change in the period under assessment. No persons have been removed from office due to changes in their criminal record.

681. The NGO has a proactive approach to identifying entities providing online casino services to Romanian residents without a licence. Offending entities are blacklisted, access to websites is blocked in Romania, and the supervisor reports unauthorised activity to law enforcement. No information, however, has been provided on how often such activity was detected and what steps were then taken. It does not check whether unlicensed land-based activity takes place.

Ministry of Justice

682. Only notaries approved by the MoJ can practice in Romania. A natural person cannot become a notary in Romania if they hold a criminal record resulting from the intentional commission of an offence; this is true also for the commitment of a crime at a later stage, where the designation as notary public would be terminated by the MoJ. Legal persons cannot act as notaries.

683. The Ministry has access to registers of criminal convictions which are accessed at the time of appointing a new notary. It is also notified by the court when an existing notary public is subsequently convicted for a crime. Whilst the statute of the professional body (NUNPR) requires notaries to be of good repute, on-going criminal investigations and association with criminals are not taken into account at the time of appointment of notaries, due to a presumption of innocence. Only final criminal convictions can be considered.

684. Data on the number of applications has not been provided. There have been no rejections of applications for notaries for integrity reasons. This is because it is not possible to become a “probational” notary (trainee notary), nor present oneself to the notarial exam having a criminal record. There have been several cases where the appointment of notaries has been subsequently terminated based on having a final criminal conviction in the period under assessment (2017 – 5; 2018 – 4; 2019 – 6; 2020 – 3; 2021 – 0; and first half of 2022 – 2).

Bar Associations

685. Only members of county bars and lawyers who have obtained their professional qualification in an EEA state can practice as lawyers in Romania. The effect of a ruling of the Constitutional Court on 4 April 2017 has been that a natural person could not become a member of a bar in Romania with any criminal record. A similar position applied for the later commitment of a crime, where membership would be terminated. This area was considered again by the Constitutional Court on 28 April 2022, and the effect of its second decision was to revoke the relevant legislative prohibition and, hence, to allow persons convicted of any offence to become a member of a bar. In response, an amendment was adopted to legislation in January 2023

providing for exclusion based on a list of specified offences, which does not cover all categories of offences that are designated by the FATF. See c.28.4 of the TC Annex.

686. County bars have access to registers of criminal convictions which are accessed at the time of accreditation but rely mainly on self-reporting for any subsequent changes. On-going criminal investigations and association with criminals are not considered, due to a presumption of innocence.

687. No centralised information is available on the number of applications to, and rejections by, bar associations. The authorities have stated that no natural persons were prevented from joining a county bar or excluded thereafter based on having a criminal conviction. Nonetheless, there have been a number of appeals to earlier decisions following the court decision of 28 April 2022 suggesting that some applicants for membership were refused based on a criminal conviction. None of the lawyers admitted between 28 April 2022 and the time of the onsite visit had any type of criminal record, and all bars had suspended the resolution of appeals against prior decisions until permanent resolution of the matter.

688. In the case of law firms, all owners and controllers must be Romanian lawyers.

BELAR

689. A person cannot be accredited as a Romanian accountant if they hold any conviction for a crime which prohibits the right to manage and administer commercial companies. This does not clearly cover TF or all categories of offence that are designated by the FATF. See c.28.4. of the TC Annex. Non-members who are accountants are not subject to checks.

690. The status of an applicant is checked before accreditation. The status of all members of the professional body is reviewed once a year and this takes into account any subsequent convictions. On-going investigations and association with criminals are not taken into consideration. Data on the number of applications has not been provided, but there have been no rejections for integrity reasons. Three accountants have been subsequently excluded from the profession in the period under assessment (for reasons of final conviction or practising the without an annual permit).

691. In the case of accounting firms, the majority of owners should be members of the professional body. No similar limitations are placed on directors which presents a vulnerability.

CTA

692. A person cannot become a member of the CTA if they have been convicted of a crime. As explained at c.28.4 of the TC Annex, the list of crimes is rather narrow – covering only some economic offences. Non-members who provide tax advice are not subject to checks. In the period under review, eight applications for membership of the CTA were rejected for lack of compliance with fit and proper criteria (applications: 2017 – 917, 2018 – 274, 2019 – 238, 2020 – 365, and 2021 – 300).

693. The status of an applicant appears to be checked before accreditation, though this has not been confirmed. Changes in circumstances are not proactively considered. On-going investigations and associations with criminals are not taken into consideration.

694. Tax advisors can carry out their activity as independent natural persons or they can associate in companies. The company must have at least one partner/shareholder who has the capacity of a tax advisor. All the other shareholders do not have to be tax advisors and, hence,

only general company legislation requirements apply to them. There is no such requirement regarding managers. These gaps create vulnerabilities.

Other

695. DPMS are subject to authorisation in Romania by the National Authority for Consumer Protection. Whilst some fit and proper requirements are in place, these appear to be linked to crimes connected to forgery and fraud in relation to precious stones and metals. Insufficient information was provided to properly assess regulatory requirements and their effectiveness.

696. There are no specific fit and proper measures in place for real estate agents, TCSPs (where not already regulated and supervised for another purpose) or VASPs.

697. Instead, reliance is placed on the Company Law. DNFBPs that are legal persons are subject to controls conducted by the NTRD, whereby a representative of the legal person certifies that shareholders (legal owners) and directors have not been convicted for crimes against property, corruption, embezzlement, forgery of documents, tax evasion, ML or TF. These checks, however, are not comprehensive. They are not applied to changes in shareholders of joint stock companies, and, more generally, there is no legal basis for excluding criminals from: (i) being a founding shareholder or acting at any time as a director, except where excluded by a court decision (a complementary sanction to conviction for an offence); or (ii) acquiring legal ownership of shares subsequent to incorporation. No evidence has been provided that court exclusions are made in practice. Nor do these controls apply to natural persons that are DNFBPs, or all categories of offence that are designated by the FATF.

698. The NOPCML requires entities providing TCSP services and VASPs to notify it of their operation. Non-compliance with this requirement is considered a contravention and the NOPCML undertakes activities to promote the awareness of this obligation. The requirement is, however, not actively enforced and, hence, it is not ensured that all relevant entities are known.

6.2.2. Supervisors' understanding and identification of ML/TF risks

699. Overall, financial supervisors and the NOPCML demonstrate a fair understanding of ML/FT risks in the country and risks connected with sectors under their supervision, this risk being strongest in the NBR. This understanding of risks, however, is limited by shortcomings in the overall understanding of risks at national level (see IO.1). This is particularly so in the assessment of risks presented by gatekeepers where there has been insufficient input from law enforcement, much of which is outdated due to the long periods of time taken to conduct investigations and prosecutions. Whilst the NBR demonstrates, at times, a broader understanding of risks than documented in written assessments (for example in relation to legal persons), this is often based on supervisory experience, rather than a comprehensive analysis.

700. A more granular analysis is needed by each of the supervisors of inherent risks, in particular connected to different products, customers, and geographies, as relevant in each sector and institution to support a deeper understanding of risk. Whilst a significant quantity of information is available to financial supervisors regarding individual institutions, its use has not yet been sufficiently systematic with a view to ensuring a comprehensive, comparable, and on-going understanding of individual and sub-sectoral risks. Instead, significant reliance is placed on supervisory judgment. The ML/FT risk understanding of DNFBP supervisors other than the NOPCML is more limited at sectoral level and risks are not assessed at entity level.

Financial institutions

701. Supervisors of FIs have all participated in the preparation of the NRA. The NBR had already undertaken a sectoral risk assessment in 2017 for the sectors under its supervision and has been updating it regularly since. According to internal procedures, it should be updated at least once every four years or when significant changes take place⁶⁵. In practice, it has been updated every year since its elaboration. This sectoral risk assessment was an important source for the relevant chapters of the NRA. Whilst it is broader in scope, its conclusions do not generally differ from the NRA. Other financial supervisors have not conducted similar sectoral assessments.

702. The main sectoral risk understanding in Romania currently stems from the NRA. Whilst the ML risk differentiates between sectors and, at times, sub-sectors/products, regarding TF, the assessment is made for the overall exposure of the country.

Table 6.1: Sectorial risk assessment pursuant to the NRA (residual risk) – FIs

| FIs | ML risk level | TF risk level |
|--|--|---------------|
| PIs | Medium-high | Low |
| EMIs | Medium-high | |
| Banks | Medium | |
| Investment firms | Medium | |
| Investment advisors | Medium | |
| Collective investment fund sector | Medium | |
| Insurance | Medium | |
| Exchange offices | Medium | |
| NBFIs | Medium (NOPCML supervised)/ Low (NBR supervised) | |
| Pension schemes and funds | Low | |

NBR

703. The NBR's understanding of sectoral risk is based on conclusions reached in the NRA. Overall, sections of the NRA covering sectors supervised by the NBR are reasonably detailed, looking at a number of key factors, which do or could present risk. However, the AT has a number of linked concerns with the methodology followed to assess sectoral risk: (i) whilst some inherent risk factors are considered (e.g., cross-border transfers), as well as a number of vulnerabilities (e.g., private banking), overall, inherent risks are not explored fully (in particular with regard to product and geographical risk); (ii) without a good understanding of inherent risk, it is not possible to fully evaluate the use of measures to mitigate those risks; and (iii) too much weight is given to the effect of those mitigating measures.

704. One outcome of this approach is that the sectoral risk for EMIs is higher than for banks, notwithstanding that banks are most commonly observed in ML typologies. Another is that NBFIs with a licence for the provision of payment or e-money services are assessed as part of the NBFIs sector, despite that they provide higher risk products (this will, however, be reflected in the individual risk rating of the institution due to the system of clusters).

705. At an individual institution level, the NBR collects a large amount of information regarding its supervised entities to inform its understanding of risk. Its main sources of information are: (i) a main extensive questionnaire, responses to which provide a broad overview of each institution from an AML/CFT perspective; (ii) since 2022, less detailed quarterly returns; and (iii) internal

⁶⁵ In 2022, after the on-site visit, the NBR updated its methodology for undertaking the sectoral risk assessment. These changes have not been considered for the purpose of this evaluation.

procedures for banks whenever these are amended, and for other FIs upon request. The main questionnaire is sent out annually (but not in 2021); it has been regularly refined throughout the years. Furthermore, the NBR requests additional information when needed, such as internal audit reports, and receives input from the NOPCML-FIU (on the number and quality of STRs of each of the obliged entities under its supervision), its prudential supervision department, as well as through international cooperation. It is not always clear whether the information requested is fully in line with the relevant risks which need to be monitored (geographies, some high-risk products, etc.). In addition, all information is all processed manually.

706. The NBR assesses individual institution risk pursuant to its risk-based procedure (hereinafter “NBR RBS Procedure”), which was approved in 2017, and is regularly updated (last in November 2021). This provides for the application of an RBA and takes account of sectoral risk. Following the EBA RBS Guidelines, the procedure divides supervised institutions into four risk categories.

707. To undertake this risk assessment, the NBR considers four criteria: (i) business model (weight 0.2); (ii) internal governance (weight 0.2); (iii) compliance with the AML/CFT framework (weight 0.35); and (iv) compliance with the TFS framework (weight 0.25). The procedure sets out factors which should be considered under each criterion - which are broad - and a wide range of supporting documents and sources are analysed under each. All the information used is contained in so-called “evaluation sheets” for each of the criteria; these are filled in by the relevant inspector in the AML/CFT Off-Site Division.

708. Using these evaluation sheets, the inspector rates the criteria. For the business model criterion, the inspector rates only inherent risk (1 to 4, with 4 for highest risk). For the internal governance criterion, the inspector rates only the strength of mitigating measures (1 to 4, with 1 for strongest measures). For the remaining two criteria, both inherent risk and mitigating measures are rated. Each of the criteria are attributed a rating from 1 to 4 and a cross-over matrix is applied to obtain a final rating for the two criteria with both components. Finally, weightings are applied to the four ratings, and a final risk rating given to the FI from 1 (low) to 4 (high). This rating can then be adjusted based on further supervisory judgment, moving up or down one risk level.

709. Apart from the criteria and underlying factors to consider, there are no further instructions or tools available to assist inspectors in assessing risk.

Table 6.2: Risk level classification of individual FIs

| Year | Risk level | Banks | PIs | EMIs | NBFIs supervised by NBR |
|-----------------------------|----------------------------------|-----------|-----------|----------|-------------------------|
| 2022 (September) | High | 1 | 0 | 0 | 0 |
| | Medium-high | 24 | 10 | 4 | 43 |
| | Medium-low | 7 | 0 | 0 | 24 |
| | Low | 3 | 0 | 0 | 2 |
| | Total no. of institutions | 35 | 10 | 4 | 69⁶⁶ |

⁶⁶ NBFIs with a PI license are included in the NBFIs column. The number of banks assessed excludes one whose activity had not started. Regarding 5 NBFIs, these had only entered the Special Register (and hence, come under the supervision of the NBR) after the risk assessment process for the relevant year had been concluded.

710. Risk categorisations for individual FIs are reviewed at least once a year or when deemed necessary (for example based on *ad hoc* information).

711. Similar to sectoral risk assessments, the understanding of risks connected with individual institutions is also predominantly focused on the quality of mitigating measures. Inherent risk in terms of exposure to risk connected to customers, products and geographies is considered only under the first factor, which has the lowest weighting in the risk calculation.

712. Whilst the NBR undertakes extensive reviews and takes into account a broad scope of information, its processes remain largely manual. This refers not only to the processing and analysis of the data that is used, but in particular to decision making, as each criterion rating and subsequent adjustment to risk classification is based purely on supervisory judgement of the relevant inspector. This is very resource intensive, and around 15 staff from the AML/CFT Off-Site Division review the individual risk assessments on a continuous basis. This leads to concerns about the consistency of individual institution risk assessments, as these are reviewed only by the head of the relevant unit of the AML/CFT off-site Division (banking/non-banking).

The FSA

713. Whilst the internal procedures of the FSA require it to take risk into consideration when supervising, no clear procedure has been in place for assessing ML/FT risks. A formal working group had been established within the FSA for revising all its internal supervisory processes, but, at the time of the on-site visit, no specific outcome was presented.

714. Before the NRA, the FSA had not formally elaborated any sectoral ML/TF risk assessments and does not periodically request data that could inform such a risk assessment. It participated in the preparation of the NRA, particularly in the sections concerning the sectors under its assessment. Whilst these sections of the NRA provide a broad description of these sectors, specific ML/FT risk factors were, generally, not included (geographic risk, PEPs, FT risks) or conclusions drawn on the risk of products, customers, and sectors in general.

715. The FSA has at its disposal a large quantity of prudential data, which is collected regularly. Whilst this information is prudential in its nature, it does allow for an understanding of the business of individual institutions, assessment of trends and identification of potential discrepancies. The FSA had collected some AML/CFT data through a questionnaire in 2017, though this was more a self-assessment questionnaire related to mitigating measures. Since then, the FSA has collected additional ML/TF information, but not systematically, and the extent of its use was not explained.

716. At an individual FI level, the FSA views institutions holistically, taking into consideration prudential, conduct and ML/FT risk. The FSA's internal procedures for assessment of entity risk takes account of: (i) risks arising from the business model; and (ii) quality of the internal governance arrangements and structures in place, including internal audit and compliance functions, and policies and procedures. In these internal procedures, the assessment and categorisation of ML/FT risks are considered specifically only in the final phase of the process, when they can be taken into account within the application of supervisory judgement and lead to a potential increase in the risk rating. There is no list of factors or criteria to be considered within such an assessment, and so a systematic approach is not followed, and supervisory judgement may not be exercised consistently across FIs. It follows that the FSA does not have a comprehensive overview of the ML/FT risk of the individual institutions under its supervision.

717. Individual institution risk profiles are re-assessed on a yearly basis or when otherwise relevant. As AML/CFT information could be taken into account at any relevant moment and no comprehensive AML/CFT assessment is undertaken, the frequency of updating the risk profile is not crucial.

Other FIs and DNFBBs

718. For other supervisors, risk understanding is mainly limited to sectoral risk understanding based predominantly on the NRA report, in which the NOPCML was extensively involved. Other DNFBB supervisors, including the NGO, were not engaged in the risk assessment but were informed *ex post* of the results, and were aware of them. According to the NOPCML, comments made by the SRBs and NGO at the finalisation stage of the NRA were taken into account in the final text. One – the NGO – does not agree with the assigned rating for its sector.

719. The NRA report contains sections on each relevant sector with varying levels of detail and depth. Overall, there is insufficient analysis of inherent risk and, in the rating, too much attention is given to mitigating measures. This can be observed through differences in ratings between: (i) real estate agents (gate-keepers for some real estate transactions) and notaries (gate-keepers for all real estate transactions), where inherent risks for real estate are the same; and (ii) TCSPs (gate-keepers for legal persons and legal arrangements) and lawyers/accountants (gate-keepers for legal persons and legal arrangements), where inherent risks linked to forming and administering legal persons and legal arrangements are very similar. In the case of the second example, inherent risks are considered by the NRA to be lower for the professional bodies because they are covered by a SRB, notwithstanding the absence of supervisory activities in the AML/CFT field.

Table 6.3: Sectorial risk assessment pursuant to the NRA (residual risk) – DNFBBs and VASPs

| DNFBBs | ML risk level | TF risk level |
|--------------------|---------------|---------------|
| Casinos | High | Low |
| Real estate agents | High | |
| TCSPs | High | |
| VASPs | High | |
| Notaries | Medium | |
| Lawyers | Medium | |
| Accountants | Medium | |
| Tax advisors | Medium | |
| DPMS | Low | |

720. None of the DNFBB supervisors systematically collect data from entities under their supervision connected to the risks they are exposed to (regarding their activity, customers, geographical exposure, etc.). Accordingly, it is not possible for them to assess continuously the risks connected with individual FIs, though the NOPCML does so to some extent.

The NOPCML

721. The NOPCML undertakes its supervisory activities, including risk assessment based on the “The Operational Procedure: Code of Risk-Based Surveillance Activity, PO-05.01”, which was adopted in 2013, last updated in February 2022⁶⁷. It bases its supervisory approach

⁶⁷ The latest amendment, taking account of the NRA, took place after the on-site visit and was approved on 14 February 2023.

predominantly on sectoral risk, which mainly stems from assessments in the EU Supranational RA. Whilst covering all EU Member States, this assessment does not necessarily consider the specificities of the Romanian context (this will be changed now to reflect the existence of the NRA).

Table 6.4: Sectoral risk based on the SNRA, as stated in PO-05.01 (extracts)

| | |
|-------------------------|--|
| Very high risk | Pawnshops, notaries, lawyers, other legal professions, TCSPs, VASPs, real estate agents, other sellers of goods in cash over threshold |
| Significant risk | NBFIs (other than pawnshops), exchange offices, post office, online gambling, accountants |

722. The NOPCML undertakes risk assessments of individual institutions to a limited extent – for geographical parts of Romania in sectors which it has selected for supervision (the periodicity is determined depending on the risk connected with the sector). The geographic areas (regions) are selected by the NOPCML according to their supposed risk, for example in connection with the socioeconomic situation. The NOPCML considers information available to it from its activities and from publicly available data and, based on this, all institutions in the selected region are then subject to an individual risk assessment. This assessment of risk considers: (i) size of activity of the entity; (ii) results of previous supervision; (iii) general field of activity; (iv) geographical risk (within Romania – same as above); and (v) reporting risk – extent to which the entity is registered in the electronic data transmission system. The procedure also includes weighting coefficients, with the highest given to results of previous supervision (45%) and size of activity (27%). It should be noted that, regarding the factors of geographical risk and field of activity, there is double counting, as these are already considered when initially selecting sectors and regions. In addition, the consideration of previous supervision results can lead to repeated focus on a limited number of entities which have been supervised. Institutions are then divided into five risk categories.

723. This process provides an extremely limited understanding of individual institutions’ ML/FT risk, as it does not consider most relevant ML/FT inherent risks (e.g., customer risk, product risk, foreign geographical risk). Whilst most obliged entities have not been subject to individual risk-ratings, a large majority of those that have are assessed as presenting an average or low risk.

Other DNFBP supervisors

724. The NGO has not undertaken any risk assessment and considers that, overall, risks in the casino sector are low (disagreeing with the risk assessment in the NRA). This is regardless of form (physical/on-line). ML/FT risks relevant for individual risk assessments are not well understood, with turnover being considered the most important criterion.

725. None of the relevant SRBs have conducted sectoral or institutional ML/TF risk assessments, and all have an insufficient granularity in understanding of risk in this area or the risks are being downplayed, e.g., risk presented by notaries servicing large-scale real estate property transactions, risks presented by lawyers and accountants offering TCSP services.

VASPs

726. The NRA does not adequately cover risk presented by Vas or VASPs, and the NOPCML – supervisor – holds insufficient information on threats and vulnerabilities in the sector, e.g., number of transactions, countries involved, and use by PEPs. It is also not clear that all VASPs (as

defined in the AML/CFT Law) will be known to the authorities (based on the notification system used).

727. At the time of the onsite visit, the NOPCML had assessed eleven VASPs in Romania. Following the same risk assessment procedure described above, two were assessed as presenting high risk, four assessed as partially high, and five assessed as presenting average risk (absence of balance sheet or very low revenue). This process provides an extremely limited understanding of individual institutions' ML/FT risk, as it does not consider most relevant ML/FT inherent risks (e.g., customer risk, product risk, foreign geographical risk).

6.2.3. Risk-based supervision of compliance with AML/CFT requirements

728. ML/FT risks are taken into consideration to some extent by the three main supervisors (NBR, FSA and NOPCML). The shortcomings described above with regard to risk understanding, and in particular individual risk understanding, such as over-reliance on quality of mitigating measures, however, necessarily negatively impact on the effectiveness of application of an RBA to AML/CFT supervision.

729. The most robust AML/CFT RBA is applied by the NBR, which supervises the most material FIs. It is currently in the process of a significant recalibration of its processes. AML/CFT aspects are not sufficiently considered in supervisory planning by the FSA; this is largely mitigated by the rule-based periodicity of the on-site cycle. The supervisory activities of the NOPCML, which covers all DNFBPs, are significantly impacted by the low number of staff involved in supervision compared to the number of supervised institutions.

730. Other DNFBP supervisors have not yet commenced AML/CFT supervision, or AML/CFT obligations are checked merely as part of supervision of compliance with conduct rules. The supervision of VASPs has only recently started.

Financial institutions

NBR

Planning

731. The NBR bases its AML/CFT supervision on the NBR RBS Procedure – introduced in 2017⁶⁸. This procedure sets out the risk assessment process (explained above) but does not regulate the undertaking of on-site or off-site inspections. To provide a strong base for this RBA, the NBR first inspected all banks in 2017 and 2018 – to understand the level of compliance throughout the sector and to set a level playing field regarding its expectations. Actual risk-based supervision commenced in 2019.

732. The intensity of supervisory activities, which impacts mainly on frequency and scope of inspections, is based on individual institutions' risk assessments (1 to 4 as above). Based on sectoral risk ratings, the NBR applies a much less intense regime to NBFIs (as defined) overall, given the lower risk that has been assessed. NBFIs are placed into four groups depending on activity and type, which determines the level of supervisor intensity (from "minimum" to "intensive") based on the individual risk score. This clustering of NBFIs is considered an efficient addition to planning risk-based supervision.

⁶⁸ The NBR has updated its RBS procedure in 2023. These changes have not been considered for the purpose of this evaluation.

733. For banks, PIs and EMIs, the onsite inspection cycle is: (i) annually for high-risk; (ii) three to five years for medium-high risk; and (iii) three to five years for medium-low risk (three years for prudentially significant banks and five years for others). Low risk banks are supervised mainly through off-site tools, but on-site inspections could take place if considered necessary. The frequency of the inspection cycle is considered reasonable. Other risk-based measures are also applied: (i) high-level meetings are held twice a year for high and medium-high risk banks, once a year for medium-low risk banks, and as needed for low-risk banks; and (ii) other than for low-risk banks, the NBR also reviews annually the internal AML report of the institution (self-assessment of the AML function).

734. According to the methodology in place since 2021, on-site inspections for NBFIs should take place purely on an *ad hoc* basis. For “intensive” engagement, there are frequent meetings with the institution or in-depth checks, whilst for “minimum” engagement, the NBR reviews only responses to periodic questionnaires that it collects; for other engagement some additional steps and activities take place compared to “minimum” engagement. For NBFIs with a PI/EMI licence, this planned level of supervisory engagement is not considered sufficient. In practice, however, the NBR has been inspecting NBFIs on-site (see table below) and, in the period under assessment, all NBFIs also holding a PI/EMI licence have been inspected at least once.

735. Inspections in 2021 and earlier years generally took place over a period of two weeks to one month (including preparation and write-up of the report), and so the depth of full-scope on-site inspections conducted was rather questionable. Since the creation of the AML/CFT Off-Site Division in 2021, more time has been allowed for each inspection to increase the depth of the control (three to four months). Inspections are intended to be thematic and focus on one or more of the NBR’s four risk criteria (business model, internal governance, compliance with AML/CFT framework and compliance with TFS framework). However, inspections usually target the latter two, which means that they are not clearly based on themes or focused on particular areas.

736. Since 2019, the NBR has also planned targeted inspections concerning a specific topic. Planned targeted inspections have a broad thematic approach (BO information, etc.). This differs to *ad hoc* targeted inspections which are reactive and usually target a specific case (customer, type of customers). Both types of inspections are often based on a complaint or on external information (e.g., concerning a typology identified by the NOPCML-FIU).

737. Based on the above methodology, an annual supervision plan (on-site and off-site) is prepared by the AML Off-Site Division and approved by the NBR Supervisory Committee. The same procedure applies for any changes. No time is allocated to potential *ad hoc* inspections (see below), though resources can be moved temporarily between units and teams. This approach is surprising, given the number of *ad hoc* inspections that have been arranged in practice.

Off-site and on-site supervision

738. Since 2021, the AML Off-Site Division now undertakes off-site supervision *stricto sensu*. The Division: (i) contributes to planned full scope inspections (see below); and (ii) conducts horizontal reviews of specific topics across the market (planned targeted inspections (see table below)), allowing general recommendation letters to be directed to the sector as well as identifying steps to be taken by specific institutions. In 2021, targeted inspections were focused mainly on the impact of the Covid pandemic, such as new technologies and increase of cybercrime.

Case study 6.3: Horizontal reviews – period updating of CDD information

In 2019, onsite inspections identified differences in the frequency of periodic updating of customer information between banks. The NBR then subsequently identified outliers amongst other banks, which were inspected by the Inspection Division through targeted or scheduled inspections.

Formal tailored recommendation letters were issued to specific banks, which have led to the application of a unitary practice across the market.

739. On-site inspections (planned and *ad hoc*, full scope and targeted) are undertaken by the on-site AML/CFT team within the Inspection Division since the end of 2021. Staff from the AML/CFT Off-Site Division closely participate – where procedures and other aspects can be checked off-site – and prepare a so-called “Inspection Action Sheet” before each inspection, which contains a summary of ML/FT risks. On-site inspections are regulated by the “NBR Procedure on the operational flow of activities in the supervisory process” which has been updated on 10 November 2021 to also include references to AML/CFT activities. This internal document is a general methodology on undertaking inspections and does not contain any specific AML/CFT specific procedures. Accordingly, there may be gaps in guidance that is needed and it may not support consistency in the approach followed to AML/CFT supervision. On-site inspections are based around: (i) broad customer sampling – with a risk-based selection; and (ii) testing the effectiveness of processes and IT systems – including use of an IT specialist (IT specialists are both in the on-site and off-site teams). For example, for TFS, the NBR checks whether the system – in a test version – would identify matches of listed persons.

740. Given the recent organisational changes and limited number of AML/CFT staff in the Inspection Division, the Off-Site Division closely supports inspections. This requires extensive cooperation and communication between the two divisions and the NBR will need to demonstrate that this “hybrid” approach is efficient and effective in practice. At this preliminary stage, it is possible to state that the number of staff and the duration of inspections have both increased, the effectiveness of which has reduced the overall period for the completion of each inspection. During the Covid pandemic, sampling and testing were conducted on-line without any particular difficulty.

741. The NBR has conducted an on-site inspection in almost every institution under its supervision in the period under assessment. Some banks have had even 16 inspections (mixture of types) in this period and a majority of banks have had some form of inspection every year. Intensity of supervision was lower in other sectors (one to three inspections since 2017).

Table 6.5: Number of inspections undertaken by the NBR

| Year | | Banks | PIs | EMIs | NBFIs supervised by NBR |
|------|--------------------------------------|-----------|----------|----------|-------------------------|
| | Number of entities ⁶⁹ | 37 | 12 | 3 | 42 |
| 2017 | On-site (planned, full-scope) | 33 | 7 | 1 | 6 |
| | On-site (<i>ad-hoc</i> , targeted) | 1 | 0 | 0 | 0 |
| | Off-site (<i>ad-hoc</i> , targeted) | 1 | 0 | 0 | 0 |
| | Total | 35 | 7 | 1 | 6 |

⁶⁹ Number of entities includes also branches of institutions from other EU countries.

| | | | | | |
|---------------------|--|-----------|----------|----------|-----------|
| | Number of entities | 36 | 11 | 3 | 71 |
| 2018 | On-site (planned, full-scope) | 19 | 4 | 0 | 12 |
| | On-site (<i>ad-hoc</i> , targeted) | 5 | 0 | 0 | 1 |
| | Off-site (<i>ad-hoc</i> , targeted) | 4 | 0 | 0 | 2 |
| | Total | 28 | 4 | 0 | 15 |
| | Number of entities | 35 | 13 | 3 | 68 |
| 2019 | On-site (planned, full-scope) | 10 | 0 | 0 | 14 |
| | On-site (planned, targeted) | 12 | 0 | 0 | 0 |
| | On-site (<i>ad-hoc</i> , targeted) | 4 | 0 | 0 | 1 |
| | Off-site (<i>ad-hoc</i> , targeted) | 7 | 0 | 0 | 0 |
| | Total | 33 | 0 | 0 | 15 |
| | Number of entities | 35 | 12 | 5 | 69 |
| 2020 | On-site (planned, full-scope) | 7 | 3 | 0 | 6 |
| | On-site (planned, targeted) | 4 | 0 | 0 | 0 |
| | On-site (<i>ad-hoc</i> , targeted) | 7 | 0 | 0 | 0 |
| | Off-site (<i>ad-hoc</i> , targeted) | 27 | 0 | 0 | 5 |
| | Total | 45 | 3 | 0 | 11 |
| | Number of entities | 36 | 13 | 5 | 74 |
| 2021 | On-site (planned, full-scope) | 3 | 2 | 1 | 9 |
| | On-site (planned, targeted) | 7 | 0 | 0 | 0 |
| | On-site (<i>ad-hoc</i> , targeted) | 2 | 0 | 0 | 0 |
| | Off-site (planned, full-scope) | 4 | 0 | 0 | 0 |
| | Off-site (<i>ad-hoc</i> , targeted) | 8 | 1 | 0 | 3 |
| | Total | 24 | 3 | 1 | 12 |
| | Number of entities | 35 | 14 | 1 | 74 |
| 2022 (Sept.) | On/off-site combined (planned, full-scope) | 9 | 0 | 0 | 1 |
| | On-site (<i>ad-hoc</i> , targeted) | 5 | 0 | 0 | 2 |
| | Off-site (planned, targeted) | 18 | 0 | 0 | 8 |
| | Total | 32 | 0 | 0 | 11 |

742. The number of inspections has been constant over the period under review (with the lowest being 40 in 2021 and highest in 2020 at 59) and, since 2018, the number of planned, full scope inspections has been broadly in line with the RBA approach described above. However, in 2020, a large number of off-site *ad-hoc* inspections took place linked to input on the use of shell companies/CEO frauds provided by the NOPCML-FIU. This led to the cancellation or postponement of 12 planned inspections in 2020, and eight in each of 2021 and 2022. This intense supervision plan and consequential changes have led to significant delays in closing inspections, where, on some rare occasions, the final report was issued more than two years after the end of the onsite visit. These delays promoted organisational changes and changes in procedures described above. The backlog in finalising inspection reports has since been addressed.

743. Overall, NBR supervisory engagement has been very frequent in the period under assessment. Whilst this ensures continuous monitoring of supervised entities, it is not clear whether it is proportionate to impact. In practice, the risk assessment of the NBR has had minimal input on its supervisory activities. Almost all banks have been inspected annually and the most intense engagement has not been with institutions assessed as having the highest risk, putting into question the use of the NBR RBS Procedure. As concerns other sectors, whilst both national and sectoral risk assessments assess transfers of funds and specifically PIs as presenting a higher risk (medium-high) (a higher risk than presented by banks), supervisory actions of the NBR do not reflect this. In the case of PIs, the authorities confirmed that on-site inspections have taken place for all institutions in 2017 and 2018 and since then have taken place only in cases where

negative information is held by the NBR, such as a complaint from a customer. EMIs are currently also supervised on-site only in cases of negative information. This level of supervisory engagement on-site is not considered sufficient.

744. In addition, the high number of *ad hoc* inspections, particularly in 2020, also raises concerns about the high-level strategy and overall objectives of the NBR. Most of these *ad hoc* inspections targeted a case of a specific customer or a group of customers, and the detrimental effect on the risk-based planned supervisory plan does not appear to be proportionate. This raises questions about changes made to the supervision plan, which do not seem systematic, or risk based. The rather unsystematic nature of inspections (in terms of scope and timing) also inhibits the NBR from focusing on developing a deeper risk understanding, undertaking more complex checks, and promoting an increase in maturity and sophistication of systems and a systematic and holistic approach to ML/FT risk mitigation.

FSA

Planning

745. The FSA's supervisory approach⁷⁰ is based on an overarching risk assessment and the main risks considered are prudential, whilst ML/FT risks are considered only when considered relevant and to a limited extent. Concerning ML/FT risk, there is no consistent approach to applying RBA to supervision by the FSA.

746. The Board of the FSA approves the supervision plan and its modifications. A three-year plan sets long term objectives, and an annual plan is used to make justified changes to the list of entities to be supervised in the up-coming year, and to set the scope and timing of each inspection. The FSA carries out "permanent" controls (continuous off-site monitoring), "periodic" controls (planned inspections) and "unexpected" controls (*ad-hoc* inspections).

747. When drawing up the three-year plan, the following criteria are considered: (i) available resources (number of entities that can be inspected in the year); (ii) date of previous inspection; (iii) nature and volume of activity; (iv) overall risk categorisation; (v) market share; and (vi) previously observed degree of compliance. All entities are supervised at least once every three years, unless there is no or minimal activity and they are assessed as presenting low risk, where they are subject to off-site supervision (so changes would be identified) and *ad-hoc* on-site inspections. Each inspection team is composed at least of two people, but more could be assigned depending on complexity, duration, experience, etc. Inspections take place over a six-to-eight-week period.

748. The "AML Hub" is involved in planning on-site inspections – when deemed relevant by the respective inspectors. Hence, there is no process which would ensure a consistent approach to consideration of AML/CFT elements both when planning and undertaking supervisory activities, as well as when assessing shortcomings and their importance.

⁷⁰ Set out in "FSA Regulation No. 4/2021 regarding the control activity carried out by the FSA" (2021) and "FSA Methodology for elaboration, modification and monitoring of the periodic control plan" (2021).

Table 6.6: Number of inspections of the FSA including AML/CFT compliance

| Year | | Investment intermediaries | Asset/ fund managers | Life insurance companies | Pension fund administrators | Life insurance intermediaries |
|-------------|-----------------|---------------------------|----------------------|--------------------------|-----------------------------|-------------------------------|
| 2017 | No. of entities | 24 | 23 | 13 | 8 | 207 |
| | On-site (total) | 11 | 8 | 4 | 8 | N/A |
| 2018 | No. of entities | 21 | 22 | 13 | 8 | 193 |
| | On-site (total) | 13 | 7 | 3 | 8 | 22 |
| 2019 | No. of entities | 20 | 22 | 13 | 8 | 181 |
| | On-site (total) | 5 | 10 | 10 | 8 | 21 |
| 2020 | No. of entities | 19 | 22 | 13 | 8 | 178 |
| | On-site (total) | 6 | 8 | 7 | 8 | 6 |
| 2021 | No. of entities | 18 | 23 | 13 | 8 | 176 |
| | On-site (total) | 8 | 5 | 10 | 8 | 6 |
| 2022 (June) | No. of entities | 18 | 23 | 13 | 5 | N/A |
| | On-site (total) | 0 | 8 | N/A | 5 | N/A |

Off-site and on-site supervision

749. Whilst the respective supervisory divisions have powers to undertake off-site supervision *stricto sensu*, none has been undertaken in the period under review.

750. On-site inspections are undertaken by the respective divisions, who will seek input from other parts of the FSA, including the “AML Hub” and identify focus areas. A significant amount of relevant information and documents are collected prior to on-site inspections, some linked to prudential data and some purely for AML/CFT purposes, and a preliminary on-site questionnaire (continuously updated) has been in use since 2015. It has not been demonstrated that this information would be used on a continuous basis (e.g., for monitoring trends, evolution, changes). During the pandemic, inspections took place on-line. The FSA has very strict rules concerning the inspection period and hence, within three months from the finalisation of the on-site inspection, the inspection report must be handed over (without any proposal for sanctions at this stage). This has been observed throughout the period under review.

751. Inspections generally cover prudential, code of conduct and AML/CFT elements, but can be dedicated to a specific topic. No specific AML/CFT topics have been reported. Whilst all inspections conducted during the period under assessment have had an AML/CFT component, this component will: (i) not have been tailored to the particular risks of the entity (or sector) since the assessment and understanding of ML/FT risks is not sufficiently developed; and (ii) not have been consistently applied as internal procedures do not provide for AML/CFT processes.

752. Overall, the AML/CFT aspects of FSA inspections appear structured but rather formalistic with a small number of clients covered by sample checks and focus on basic AML/CFT measures (client data, information, and document retention, etc.) mainly in relation to formal implementation of FSA Regulations in the procedures of the institution.

753. Notwithstanding this, the FSA has demonstrated that, in case of specific information and concerns with AML/CFT relevance, it will take *ad hoc* action against institutions. One example was given related to an *ad hoc* inspection of an investment fund manager where there were serious concerns about the integrity of the institution.

Case study 6.4: Ad-hoc inspection of an investment fund manager

In 2020, based on information collected off-site, the FSA noted: (i) changes in the shareholding structure of an investment fund manager (several non-resident shareholders (EU Member State)), each with individual holdings below 10%; (ii) new non-resident shareholders from the same country as new shareholders in one of the managed closed-end funds; and (iii) a change in the investment policy of this fund to invest in the country of residence of the shareholders.

The FSA initiated an inspection and identified inadequate internal AML/CFT procedures, deficient customer risk assessments, and an atypical typology of some subscription-repurchase operations and insufficient assessment thereof. It then: (i) issued a fine to the investment fund manager and its director; (ii) reassessed the reputation and integrity of the director and withdrew his authorisation; (iii) informed the NOPCML-FIU and law enforcement; and (iv) cooperated with the relevant supervisory authority in the country of residence of the shareholders.

Other FIs and DNFBPs

754. The NOPCML applies a simple RBA to supervision and undertakes a large number of inspections in order to maximise its outreach, despite its extremely limited resources. Given the limited data that it holds, it is doubtful that the NOPCML can prioritise assessments of its highest risk entities. Whilst the impact of the NOPCML on sectors supervised is broad, its activities take the form more of outreach than supervision.

755. Other DNFBP supervisors do not take ML/FT risk into account in the intensity or scope of their inspections. There is no off-site supervision nor AML/CFT supervision manuals in place.

NOPCML

756. The NOPCML conducts supervision in line with detailed procedures⁷¹. These provide a comprehensive and consistent methodology for relevant staff.

Planning

757. As mentioned above, each sector has been given a risk rating based on the EU SNRA. This risk rating determines supervision frequency: four years – low risk; three years – moderate risk; 2.5 years – significant risk; and 1.5 years – very high risk. The NOPCML has a four-year plan in place which sets out the sectors which will be supervised during that period (adopted in

⁷¹ Operational Procedure: Code of Risk-Based Surveillance Activity, PO-05.01 (adopted in 2013, last amended on 26 January 2022 before on-site visit and on 14 January 2023 in line with NRA) for off-site supervision and Operational Procedure: Control Activity, PO-05.02 for on-site inspections.

December 2021 and covering the period 2022 to 2025). In practice, it appears that these guidelines on frequency are not being followed (see below).

758. The basis for choosing entities to be inspected in the sectors selected is explained above (core issue 3.2). The final annual supervision plan is approved by the Director of the NOPCM and lists the specific entities to be inspected and timeframe. Generally, inspections last about two days, though overall activity takes one to two weeks.

759. As described above, pursuant to the risk assessment, entities are divided into five risk categories. The on-site supervision plan covers all entities assessed as having partially high or high risk, unless they are too numerous in number. Low and average risk entities are supervised on-site only if there is additional information justifying supervisory action. In addition, the respective procedure sets out the supervisory intensity: (i) high intensity for high-risk degree I; (ii) average for high degree II risk; and (iii) limited for partially high risk. For high intensity reviews, there is a full scope review of compliance with AML/CFT legislation; for others, checks are more limited, and focus only on some elements of legislation. Except for DNFBPs assessed as high-risk degree I, the level of supervisory engagement is not considered sufficient since it does not proactively test compliance with all AML/CFT requirements.

Off-site and on-site supervision

760. There is no off-site supervision *stricto sensu*.

761. On-site supervision is always undertaken by two inspectors at a time using standardised forms for all the relevant activities (notice of launching an inspection, including requested documents, inspection protocol, etc.). Due to capacity constraints, the NOPCML looks to find a balance between broader outreach (by inspecting a higher number of entities) and the depth of its inspections. It appears that priority has been given to the first aspect, which may be appropriate given the number of smaller entities (which are often individuals) where basic awareness raising of obligations is still necessary (see IO.4).

Table 6.7: Supervisory actions of the NOPCML of DNFBPs

| | | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 (June) |
|------------------------------|--------------------|--------|--------|--------|--------|--------|----------------|
| Exchange offices | No. of entities | 398 | 411 | 425 | 436 | 451 | 449 |
| | No. of inspections | 32 | 26 | 47 | 0 | 20 | 0 |
| NBFIs | No. of entities | 6 298 | 6 304 | 6 276 | 6 319 | 6 096 | 6 138 |
| | No. of inspections | 22 | 26 | 77 | 0 | 73 | 2 |
| Casinos (terrestrial) | No. of entities | 5 | 5 | 6 | 3 | 5 | 3 |
| | No. of inspections | 0 | 4 | 0 | 0 | 0 | 0 |
| Casinos (on-line) | No. of entities | 26 | 27 | 27 | 28 | 29 | 31 |
| | No. of inspections | 0 | 0 | 0 | 0 | 0 | 0 |
| Real estate agents | No. of entities | 6 358 | 6 469 | 6 650 | 6 944 | 6 911 | N/A |
| | No. of inspections | 11 | 50 | 0 | 0 | 0 | 16 |
| TCSPs | No. of entities | N/A | N/A | N/A | N/A | N/A | 761 |
| | No. of inspections | 0 | 0 | 0 | 0 | 0 | 2 |
| VASPs | No. of entities | N/A | N/A | N/A | N/A | 5 | 11 |
| | No. of inspections | N/A | N/A | N/A | 0 | 0 | 2 |
| Notaries | No. of entities | 2 360 | 2 422 | 2 478 | 2 479 | 2 509 | 2 550 |
| | No. of inspections | 2 | 0 | 16 | 0 | 0 | 0 |
| Lawyers | No. of entities | 22 943 | 22 878 | 23 554 | 23 424 | 23 308 | 22 818 |
| | No. of inspections | 0 | 0 | 49 | 0 | 0 | 0 |

| | | | | | | | |
|--|--------------------|-----------------|------------------|----------------|----------|---------------|-----------------|
| Accountants, auditors, tax advisors | No. of entities | 57 508 | 59 234 | 59 012 | 59 336 | 59 262 | 53 842 |
| | No. of inspections | 0 | 12 | 111 | 0 | 0 | 0 |
| Total no. of inspections⁷² | | 67 / N/A | 118 / 348 | 300/306 | 0 | 93/103 | 22 / N/A |

762. The NOPCML has not followed its own RBA, since the following sectors (assessed as presenting very high risk) have not been covered every 18 months: notaries, lawyers, TCSPs, and real estate agents. Indeed, more supervisory effort has been directed towards sectors considered to present a lower risk (albeit still significant risk), e.g., currency offices and NBFIs. It is also clear that the vast majority of entities will never have been subject to any supervisory action during the period under assessment. No inspections were undertaken by the NOPCML of: (i) TCSPs (other than lawyers and notaries) until 2022, notwithstanding the absence of any other supervisor for this sector; (ii) online casinos, notwithstanding that these were not supervised by the NGO, or (iii) DPMS.

763. In 2020, during the Covid pandemic, no inspections were undertaken, but the NOPCML focused on other supervisory and regulatory tasks (answering queries from obliged entities, preparation of the NRA, etc).

764. Based on meetings with entities supervised by the NOPCML, it appears that some (mainly DNFBPs) consider inspections to be a form of individual training. This is in line with the view of the authorities, which confirmed that they consider the training component of inspections to be very important to ensure that AML/CFT obligations are understood. However, too much attention may be given to this training element at the expense of identifying breaches in the application of AML/CFT requirements.

765. The NOPCML has entered into agreements in the course of 2022 with relevant SRBs and the NGO⁷³. Prior to these agreements, it appears there was limited cooperation or coordination (except for outreach). The intention of such agreements is understood to be to recognise the greater role to be played by other DNFBP supervisors in future periods – which will be responsible for conducting the main supervisory duties. Whilst these agreements are a positive development, they are drafted at a rather high-level. Generally, they establish cooperation in three areas: (i) issuance of secondary legislation; (ii) training; and (iii) supervision. The last area is, however, covered rather generically, setting out some elements of what the SRB/NGO should do (collect information, assess risks, and inspect), and they are very open in nature, not setting out any detail or specific obligations. In addition, there are no provisions dealing with the resolution of conflicting opinions between supervisors.

766. From the wording of these agreements, it is not clear: (i) who, in future, should lead on the supervisory effort (there is no provision saying that the NOPCML will not); (ii) what power one authority should have to monitor and ensure the quality of supervision undertaken by the

⁷² Total number of inspections includes only the FATF relevant sectors included in the table and the second number also includes sectors supervised by the NOPCML which are not covered by the FATF Standards, and which are not shown above.

⁷³ Cooperation Agreement no. 1717/16.03.2022 concluded by NOPCML with BELAR, Cooperation Agreement no. 3105/17.05.2022 concluded by NOPCML with CTA, Cooperation Agreement no. 4630/27.07.2022 concluded by NOPCML with NUNPR, Cooperation Agreement no. 5550/15.09.2022 concluded by NOPCML with NARB, and Cooperation Agreement no. 5779/26.09.2022 concluded by NOPCML with NGO.

other authority (the robustness of processes, outcomes of risk assessments, frequency, depth, etc.); and (iii) whether any consideration has been given to the capacity or readiness of supervisors other than the NOPCML to take on a greater role in AML/CFT supervision (whether there is sufficient knowledge and understanding of AML/CFT obligations and risks).

Other DNFBP supervisors

767. The NGO has responsibility for AML/CFT supervision as part of its general supervision of casinos. The AT has not been provided with information on the number of supervisory staff the NGO has at its disposal, and, in recent years, there has been limited supervision of terrestrial casinos in general⁷⁴. The NGO has provided numbers for inspections (2017 – 11; 2018 – 10; 2019 – 16; 2020 – 1; 2021 – 1; and 2022 – 3), which take place over a period of one to two days. The scope of AML/CFT aspects checked is rather formal and superficial: appointment of a compliance officer, declaration of BO, formal existence of an STR reporting system, etc. For online gambling, the NGO calls its activities “monitoring” which appears to consist mainly of ensuring that illegal unlicensed activity does not take place. No AML/CFT aspects are checked. Overall, the low knowledge and understanding of AML/CFT risks and obligations of the NGO would, in any case, impair the quality of its supervision in this respect.

768. SRBs do not supervise the extent to which members are complying with the broad range of AML/CFT requirements. Whilst both NUNPR (notaries) and the CTA (tax advisors) conduct oversight of members, inspections are focussed on compliance with professional conduct requirements and not driven by ML/TF risk, e.g., notaries specialising in large scale real estate transactions. Inspections are generally triggered by complaints, and they are formalistic in practice. Nevertheless, some areas covered are relevant also for AML/CFT purposes (e.g., CDD and record keeping) and some minor shortcomings have been detected by the NUNPR. SRBs for lawyers and accountants have not exercised any supervisory duties during the period under review.

VASPs

769. The NOPCML has commenced its supervisory activities regarding covered VASPs in 2022. On-site inspections have been planned for all the high and partially high-risk entities (six in total from its assessment of the first eleven to notify).

770. Inspections of compliance by the two high-risk entities with AML/CFT legislation (including TFS) were undertaken in July 2022. The inspections covered an overview of whether the formal AML/CFT framework was in place (e.g., statutory appointments, staff training, use of TFS screening software available, etc.). Overall effectiveness of supervisory activities is hindered by a lack of reliable information held by the NOPCML and predominant reliance on self-reporting of VASPs.

6.2.4. Remedial actions and effective, proportionate, and dissuasive sanctions

771. Remedial measures are used by supervisors as a rule when breaches are identified, and they are followed-up. Supervisors of FIs have also applied a broad range of sanctions, including against managers. However, the effectiveness of the sanctions applied has not been

⁷⁴ This was partly due to the fact that land-based casinos were closed during the lockdowns connected to Covid.

demonstrated. Except for those supervised by the NBR, obliged entities seem to underestimate the seriousness of breaches identified by their supervisor.

Financial institutions

NBR

772. In every case when a shortcoming is identified, remedial action is agreed and followed by continuous dialogue with the institution to confirm that the required measures have been taken within the period set. This monitoring is undertaken by the AML/CFT Off-Site Division; 18 off-site actions were undertaken in 2021 and 2022.

773. In addition, the NBR now has a broad range of sanctions at its disposal that can be applied to serious, repeated, or systematic breaches, in some but not all areas. See c.27.4 in the TC Annex. These sanctions include written warnings, fines, removal of a manager and withdrawal of a licence. The apparent limitation is not considered to limit effectiveness in any material way. Regardless of this aspect, the NBR can apply several supervisory actions without limitations, such as issuance of a letter of recommendation.

774. Before the entry into force of the current AML/CFT Law (1 January 2020), sanctioning powers of the NBR were limited and the maximum fine was set at only EUR 20 000. Pursuant to the revision of the AML/CFT Law: (i) obliged entities had a grace period of six months in which to put in place changes (and so could not be sanctioned for breaches during this period); and (ii) breaches in respect of the period up to 31 December 2019 could not be sanctioned after this date due to the absence of transitional provisions. Due to this, the fuller range of available sanctions as described in the previous paragraph has been available for compliance deficiencies identified since July 2020.

775. The NBR RBS Procedure sets out the supervisor's remediation follow-up and sanctioning process, including possible steps and measures the NBR is empowered to take. Furthermore, it provides general criteria to be considered by the NBR when deciding on actions. In particular, the NBR should consider: (i) the gravity and duration; (ii) responsibility; (iii) income of the entity; (iv) profit derived; (v) degree of cooperation with the NBR; (vi) prior breaches; and (vii) potential systemic consequences. The NBR is required to publish sanctions for AML/CFT breaches, which it has started doing since 2020⁷⁵.

776. A decision to apply a sanction of the NBR can be appealed at the administrative court. Whilst this is not a common practice, one appeal was sustained after a series of court proceedings. Whilst this does not create any precedent, the appeal process was particularly burdensome and time-consuming for the supervisor. The NBR has not explained what effect, if any, this case has had on its approach to sanctioning.

Table 6.8: Number and type of AML/CFT sanctions imposed by the NBR

| Year | | Banks | PIs | EMIs | NBFIs supervised by NBR |
|------|--------------------------|-------------|-----|------|-------------------------|
| 2017 | Inspections (number) | 34 | 7 | 1 | 6 |
| | Fines (number) | 15 | 0 | 0 | 0 |
| | Fines (value) | EUR 202 491 | 0 | 0 | 0 |
| | Written warning (number) | 25 | 0 | 0 | 1 |

⁷⁵ <https://www.bnr.ro/Sanc%c8%9biuni-emise-de-BNR-pentru-nerespectarea-legisla%c8%9biei-incidente--20132.aspx#peloc> (only in Romanian)

| | | | | | |
|--------------------|---------------------------------|---------------------------|---|---|------------------------------|
| | Other (number) ⁷⁶ | 28 | 0 | 0 | 1 |
| | Total sanctions (number) | 68 | 0 | 0 | 2 |
| 2018 | Inspections (number) | 24 | 4 | 0 | 13 |
| | Fines (number) | 5 | 0 | 0 | 2 |
| | Fines (value) | EUR 81 659 | 0 | 0 | EUR 9 670 |
| | Written warning (number) | 3 | 0 | 0 | 5 |
| | Other (number) | 17 | 0 | 0 | 4 |
| | Total sanctions (number) | 25 | 0 | 0 | 11 |
| 2019 | Inspections (number) | 26 | 0 | 0 | 15 |
| | Fines (number) | 7 | 0 | 0 | 2 |
| | Fines (value) | EUR 43 202 | 0 | 0 | EUR 7 376 |
| | Written warning (number) | 0 | 0 | 0 | 3 |
| | Other (number) | 28 | 0 | 0 | 10 (1 withdrawal of licence) |
| | Total sanctions (number) | 35 | 0 | 0 | 15 |
| 2020 | Inspections (number) | 18 | 3 | 0 | 6 |
| | Fines (number) | 0 | 0 | 0 | 1 |
| | Fines (value) | 0 | 0 | 0 | EUR 6 202 |
| | Written warning (number) | 6 | 0 | 0 | N/A |
| | Other (number) | 15 | 0 | 0 | N/A |
| | Total sanctions (number) | 21 | 0 | 0 | 1 |
| 2021 | Inspections (number) | 12 | 2 | 1 | 9 |
| | Fines (number) | 0 | 0 | 0 | 1 |
| | Fines (value) | 0 | 0 | 0 | EUR 6 097 |
| | Written warning (number) | 3 | 0 | 0 | 2 |
| | Other (number) | 7 | 0 | 0 | 5 (1 withdrawal of license) |
| | Total sanctions (number) | 10 | 0 | 0 | 8 |
| 2022 (June) | Inspections (number) | 12 | 0 | 0 | 1 |
| | Fines (number) | 1 | 0 | 0 | 0 |
| | Fines (value) | EUR 100 000 ⁷⁷ | 0 | 0 | 0 |
| | Written warning (number) | 1 | 0 | 0 | 0 |
| | Other (number) | 6 | 0 | 0 | 0 |
| | Total sanctions (number) | 8 | 0 | 0 | 0 |

777. In the period since 2017, the NBR has given a total of 28 fines to banks (out of which 15 in 2017) in the total value of EUR 427 352, the average fine being EUR 15 263. For NBFIs, there have been 6 fines with a total of EUR 29 345, with an average of EUR 4 890. The measures described as “other” were remediation plans and recommendation letters. In addition, the NBR

⁷⁶ The reference to “other” includes orders for remediation measures and recommendation letters.

⁷⁷ Not final at the time of the onsite.

sanctioned in the period under assessment the whole management of one bank and the CRO of another bank (though information has not been provided on the type of sanction). No sanctions have been reported concerning PIs and EMIs.

778. Since 2018, the NBR has not applied sanctions consistently and, generally, other measures (mainly remediation) were preferred. The number (and value in the case of fines) of sanctions applied to the banking sector is considered extremely low taking account of: (i) the size and importance of the sector; and (ii) financial resources of the sector. Whilst it appears that historically this has been caused by the legislative limitations, the NBR has not demonstrated that it has been proactively using its new power to apply higher fines (though the level of the most recent fine is higher than those previously applied under the previous law).

FSA

779. The FSA applies remedial measures in every case of breach and duly follows-up that they have been addressed. A period for remediation is usually set between 90 to 120 days and the institution has to prove that sufficient action has been taken. Measures are, however, limited by the extent and type of findings, which are often rather formalistic or targeted to specific customers due to the nature of inspections.

780. The FSA also has a broad range of sanctions at its disposal, including written warnings, fines, removal of managers and withdrawal of a licence. See c.27.4 in the TC Annex. On rare occasions, decisions have been appealed, but always sustained by the court.

781. Its new methodology for applying sanctions⁷⁸ sets clear criteria and factors for the FSA to consider, such as gravity, profit, impact, duration, and cooperation with authorities. It also contains mitigating and aggravating circumstances that should be considered. It represents a significant change of approach, and its aim is to ensure consistency and proportionality in the sanctioning regime of the FSA. Its effective use in practice could not be assessed given that it was adopted so soon before the on-site visit.

782. Previously, sanctions applied in the period under review were practically identical and low (except for the insurance sector, nonetheless, for these large fines AML/CFT aspects were not the predominant component, as they accompanied significant prudential shortcomings).

Table 6.9: Number and type of sanctions imposed by the FSA including AML/CFT breaches⁷⁹

| Year | | Investment firms | Asset/fund managers | Life insurance companies | Pension fund administrators | Life insurance intermediaries |
|------|--------------------------|------------------|---------------------|--------------------------|-----------------------------|-------------------------------|
| 2017 | Inspections (number) | 11 | 8 | 4 | 8 | 2 |
| | Fines (number) | 4 | 3 | 0 | 0 | 2 |
| | Fines (value) | EUR 12 470 | EUR 4 730 | 0 | 0 | EUR 1 546 |
| | Written warning (number) | 2 | 2 | 1 | 0 | 2 |

⁷⁸ “FSA Procedure regarding the establishment and application of sanctions or administrative measures that the FSA has the power to order” issued in April 2022 (before a previous procedure on sanctioning from 2016 was used).

⁷⁹ All the sanctions applied by the FSA relate to prudential, financial conduct and AML/CFT obligations. None are AML/CFT specific.

| | | | | | | |
|-------------|---------------------------------|-----------------|----------------|---------------|----------|-----------|
| | Other (number) ⁸⁰ | 11 | 5 | 0 | 0 | 0 |
| | Total sanctions (number) | 17 | 10 | 1 | 0 | 2 |
| 2018 | Inspections (number) | 13 | 7 | 3 | 8 | 22 |
| | Fines (number) | 6 | 1 | 0 | 0 | 1 |
| | Fines (value) | EUR 8 009 | EUR 1 063 | 0 | 0 | EUR 1 041 |
| | Written warning (number) | 11 | 7 | 0 | 0 | 3 |
| | Other (number) | 19 | 7 | 0 | 0 | 0 |
| | Total sanctions (number) | 36 | 15 | 0 | 0 | 4 |
| 2019 | Inspections (number) | 5 | 10 | 10 | 8 | 21 |
| | Fines (number) | 0 | 1 | 0 | 0 | 2 |
| | Fines (value) | 0 | EUR 42 283 | 0 | 0 | EUR 2 604 |
| | Written warning (number) | 3 (2 entities) | 4 (1 entity) | 0 | 0 | 1 |
| | Other (number) | 6 | 8 | 0 | 0 | 0 |
| | Total sanctions (number) | 9 | 13 | 0 | 0 | 3 |
| 2020 | Inspections (number) | 6 | 8 | 7 | 8 | 6 |
| | Fines (number) | 1 | 4 (1 entity) | 16 | 0 | 0 |
| | Fines (value) | EUR 1 033 | EUR 15 505 | EUR 692 857 | 0 | 0 |
| | Written warning (number) | 5 (3 entities) | 3 (1 entity) | 11 | 0 | 0 |
| | Other (number) | 10 | 12 | 10 | 0 | 0 |
| | Total sanctions (number) | 16 | 19 | 37 | 0 | 0 |
| 2021 | Inspections (number) | 8 | 5 | 10 | 8 | 6 |
| | Fines (number) | 8 (4 entities) | 0 | 28 | 0 | 0 |
| | Fines (value) | EUR 2 520 | 0 | EUR 5 226 583 | 0 | 0 |
| | Written warning (number) | 28 (7 entities) | 6 (4 entities) | 8 | 0 | 0 |
| | Other (number) | 11 | 7 | 6 | 0 | 0 |
| | Total sanctions (number) | 47 | 13 | 42 | 0 | 0 |
| 2022 (June) | Inspections (number) | 2 | 8 | 1 | 5 | N/A |
| | Fines (number) | 3 (1 entity) | 3 | 1 | 0 | N/A |
| | Fines (value) | 0 | EUR 11 428 | EUR 26 326 | 0 | N/A |
| | Written warning (number) | 4 (1 entity) | 7 (2 entities) | 0 | 0 | N/A |

⁸⁰ The reference to other includes action plans, informal warnings, recommendations, and requests for remediation.

| | | | | | |
|---------------------------------|----------|-----------|----------|----------|------------|
| Other (number) | 0 | 4 | 0 | 0 | N/A |
| Total sanctions (number) | 7 | 14 | 1 | 0 | N/A |

783. Generally, before the change in approach, the FSA did not consider that breaches identified during inspections were sufficiently serious to proceed to a sanction, or, if they were, preferred to have them remedied during the inspection. Amongst sanctions, written warnings were most commonly used, and it applied fines as a last resort. The AT is not persuaded that sanctions have been applied in every case that they could have been and, whilst remediation is important, this approach is not sufficiently dissuasive, given the financial resources of the sector. On the other hand, when serious doubts about the integrity of one particular institution existed, the FSA did not hesitate to take strong and immediate action. This can be observed in the case above (case study 6.4), and in the table above in 2020. All sanctions are published by the FSA. Whilst the new approach to sanctioning is intended to address these issues, AML/CFT compliance is not viewed as a priority for the FSA and its risk understanding is limited, so the seriousness of breaches may remain understated.

DNFBPs

784. For DNFBPs, only the NOPCML has applied sanctions for AML/CFT breaches to the entities under its supervision. The SRBs do not have a power to apply sanctions for breaches of AML/CFT obligations under the AML/CFT Law and would have to: (i) request the NOPCML to do so; and/or (ii) apply disciplinary measures to members. No such requests were made to the NOPCML. The NGO has not applied any sanctions (since it did not identify any irregularities).

785. The NOPCML always requires a remediation plan to be put in place if shortcomings are identified. The follow-up on compliance with that plan is limited though, mainly given staffing constraints.

786. The NOPCML follows internal procedure PO-05.02 for applying sanctions. This provides for factors to consider when assessing the breach, such as frequency, gravity, duration, degree of responsibility, previous violations, etc.; the specific application thereof is left to the judgment of the responsible officer. According to the NOPCML, it always imposes a sanction when a breach is encountered. This might, however, be subject to differing interpretations of what is a breach, as it seems that the NOPCML considers only serious shortcomings as breaches.

787. In total, since 2017, the NOPCML has given out 113 fines with a total value of EUR 385 725, the average fine being EUR 3 413 and uses this sanction much more willingly than the NBR and FSA. It has been most active in sanctioning exchange offices and NBFIs, with only limited remediation and sanctioning activity in other sectors (in line with supervisory activity). There are not significant differences in amounts between different sectors, the average generally ranging between EUR 3 000 and EUR 4 000. The value of fines appears in line with the generally smaller size of the entities that the NOPCML supervises (many are individuals). Nonetheless, it is not clear whether and how the NOPCML takes size into account when applying sanctions, since its supervisory responsibilities also extend to offices of international law firms and NBFIs. Also, the consistent level of fines suggests that: (i) specific factors are not considered for each case (and so sanctions are not dissuasive or proportionate); or (ii) similar areas are covered during inspections - leading to same findings.

788. The NOPCML sees a fair number of its sanctions being appealed at the court. It has been explained that this is due to the smaller size of the entities which endeavour to avoid the fine due

to its potential financial impact. The majority of the sanctions are sustained with some fines being reduced in value or changed to a warning. Generally, the reduction is based on the conclusion of the court that a fine should be preceded by a warning. There is no pattern in the type of obliged entity appealing sanctions.

789. No sanctions were imposed on key function holders in DNFBPs.

VASPs

790. As described above, supervision of VASPs has been initiated only in 2022. Inspections in the two high risk entities were undertaken in July 2022 with regard to AML/CFT/TFS legislation. In one case, remedial measures were ordered, and, in the other, no further actions were taken. The remedial measures recommended the compliance officer to participate in AML/CFT training and to keep internal AML/CFT procedures up to date. No sanctions were applied.

6.2.5. Impact of supervisory actions on compliance

791. All authorities have been involved in significant training and awareness-raising activities, which are highly appreciated by obliged entities. Practical elements providing insight into typologies and cases were particularly welcome. The large number of training opportunities has had a significant impact on improving compliance as a significant number of supervised entities have participated at one or more of training events and private sector representatives met on-site were able to elaborate on obligations and risks.

792. At a granular level, the follow-up of remediation plans by supervisors has led to an increase of compliance in particular institutions. The NBR and the NOPCML have demonstrated their impact on individual compliance across the sectors that they supervise.

793. Accordingly, supervisory action has had a positive effect on compliance. However, apart from the NBR, which confirms to a certain extent that positive changes were achieved pursuant to its activities, no other supervisor has taken any steps to measure the impact of its activities. The approach of the NBR in this respect is also *ad hoc* rather than systematic.

Financial institutions

NBR

794. The NBR has demonstrated significant impact of its supervisory actions on compliance with AML/CFT obligations – at entity and sectoral level.

795. The private sector has acknowledged that the NBR is thorough in its follow-up and requests detailed confirmation that required remedial measures have been taken after each inspection. Generally, follow-up is undertaken by the AML Off-site Division after inspections but may also be covered as part of subsequent on-site inspection. The effect of such remediation plans is to improve compliance at entity level in specific areas.

796. In addition, the NBR has actively identified horizontal issues which are problematic within a sector and taken steps to remedy them. It does so generally in the form of so-called “letters of recommendation” (see below) which have been used by the NBR on a number of occasions to transmit a message horizontally to a broader number of supervised entities. They can be either sent individually, or across the sector, or published. The NBR subsequently follows up on these letters to verify whether they have been duly followed, as part of on-site inspections or off-site checks.

Case study 6.5: Repeated STRs

During on-site inspections, the NBR had observed that banks would file a STR (often ex-ante), and when no specific instructions were received from the NOPCML-FIU, would continue the business relationship and to make STRs (again often ex-ante) for subsequent transactions.

Through a letter of recommendation, the NBR called on all banks to conduct more extensive reviews of such business relationships to determine whether: (i) the relationship should be terminated; or (ii) there was a satisfactory basis for continuing the relationship, in particular by focusing on the extent of the documentation and reasonableness of the purpose of the business relationship.

In 2019/2020, the NBR undertook several *ad hoc* targeted inspections (on-site and off-site) and the NBR continues to cover this area in full scope inspection. It has confirmed that since its activities have taken place, banks have adopted a much stricter approach to such situations. In 2020, there was an increase of 82% in the number of suspended transaction cases (compared to 2019), because of an increased number and quality of ex-ante STRs.

797. However, the NBR does not measure the success of what it does at a more strategic level, e.g., setting objectives for, and presenting trends in, findings from supervisory engagement, quality of reporting, and quality of BRAs. This limits the extent to which the supervisor can demonstrate that compliance is improving over time: generally, by sector, and by area examined.

FSA

798. Inspection divisions follow up off-site remedial measures applied after an on-site inspection. This has been confirmed by representatives of the private sector met on-site. Nonetheless, the private sector has also described the approach of the FSA to be rather formalistic, and so the impact of improvements made would be rather limited. The FSA does not measure the success of what it does at a more strategic level and has not demonstrated any impact on compliance of the entities under its supervision at macro level.

DNFBPs

799. Awareness raising activities of the NOPCML (sometimes in partnership with SRBs) have clearly had an effect on compliance by DNFBPs with obligations, based on feedback provided to the AT during the onsite.

800. As mentioned above, NOPCML inspections are largely considered by supervised entities to be a form of bespoke training. Whilst this perhaps identifies a misunderstanding of the role that supervisors play, it does increase the overall knowledge and awareness of the private sector of its AML/CFT obligations. Overall, the engagement of the NOPCML was highly appreciated by the private sector.

801. However, given the limited resources available to the NOPCML and large number of DNFBPs that have not yet been inspected, it is not possible for the NOPCML to demonstrate at a more strategic level that it is having a positive effect on compliance.

VASPs

802. Given that supervisory activities have only recently started, it is not possible for the NOPCML to demonstrate that their actions have had an effect on compliance.

6.2.6. Promoting a clear understanding of AML/CFT obligations and ML/TF risks

803. Overall, a clear message of AML/CFT obligations and ML/TF risks is being promoted in Romania. There have been a large number of AML/CFT outreach activities undertaken by the authorities. The actions of the authorities are complementary to each other. In addition, the NBR, FSA and the NOPCML are considered as approachable and open by supervised entities.

804. Nonetheless, the organisation and content of awareness raising activities of the authorities are necessarily impacted by shortcomings of risk understanding at national and sectoral level, as these are passed further down to the private sector. Conclusions on more granular analyses of some further risk factors, as discussed above (geographic risk, legal form of customers, etc.) are, hence, not covered in awareness raising activities.

Regulations and guidance

805. There is a broad variety of regulations and guidance available to obliged entities. See R.34.

806. In addition, the NBR actively transmits information to supervised entities in the form of: (i) “letters of information”; and (ii) “letters of recommendation”. The former transmits general information, for example on specific ML activities or specific suspicious behaviour. The latter publicise: (i) specific supervisory findings of the NBR; or (ii) areas where it is necessary for action to be taken at sectoral level (e.g., de-risking, impersonation fraud, and application of international sanctions), often based on external source, e.g., the EBA. Other supervisors do not make use of such letters.

807. Other problematic issues (e.g., use of nominees, repeat STRs, periodic updating of CDD) are generally addressed by the NBR at entity level, where tailored letters of recommendations can be given and followed-up. Nonetheless, the effect of such an approach is to limit outreach in areas that have greatest relevance to Romania which may then not be addressed on a consistent basis.

808. Some information on breaches is included in the sanctions published by the NBR (see above). All sanctions are published by the FSA.

Training

809. The NOPCML, together with other supervisors, has been very active in the period under assessment in providing training to obliged entities, including members of SRBs. Training has been organised predominantly in Bucharest, but for some types of obliged entities (mainly DNFBPs with greater geographical distribution, such as lawyers, notaries, and auditors) in other cities too. During and since the Covid pandemic, training has also been provided on-line, which has helped to extend outreach. Training has often included sector specific guidance and relevant indicators of ML/TF.

810. In 2022 (up until the on-site visit (September)), the NOPCML organised 56 training sessions, mostly with other competent supervisors. This extensive cooperation amongst relevant authorities and SRBs is highly positive, as it enhances the understanding of risks and obligations, but in particular it also ensures consistency in their interpretation. Training was attended in total by almost 10 000 participants from the supervised sectors. The scope of this training was broad. In addition, the FSA communicated some preliminary outcomes of the NRA at training in 2022.

811. Independently from the NOPCML, BELAR has also run training for accountants (in total six events in the years 2020 and 2021) and NUNPR for notaries public (one each year in the period

under assessment). All these events had tens to hundreds of participants (mainly since they were done virtually after the pandemic).

812. Following implementation of Regulations under the AML/CFT Law, both the NBR and FSA organised meetings with supervised entities on new aspects and implementation problems.

Consultation and feedback

813. NBR representatives regularly attend meetings of the Romanian Banking Association on an *ad hoc* basis. Topics discussed included clarification on supervisory approach, interpretation of the legislative framework, quality of STRs or some specific subjects connected to recent developments. It is not clear how often the NBR participates at these meetings.

814. The NBR and FSA both regularly provide written answers to questions from supervised entities/professional associations, to clarify specific regulatory aspects regarding CDD, BO identification, appointment of compliance officer, independent audit function tests, etc.

Overall conclusions on IO.3

815. All sectors covered by the FATF Standards have a designated AML/CFT supervisor, though the application of preventive measures to VASPs, and extent of supervision, have been limited. The VASP sector is considered by the AT to be highly important.

816. Market entry requirements are significantly more robust for FIs, including banks and PIs - weighted by the AT as the most important sectors in Romania. Checks in other sectors, some of which are also considered to be highly important, are less effective and some vulnerabilities are present. However, only limited exploitation of these vulnerabilities by criminals has been detected.

817. There is scope for improving understanding of ML/FT risks, and there is need to enhance current supervisory practices - which are not systematic and place significant reliance on supervisory judgement. Nonetheless, in the financial sectors, this is mitigated by the largely rules-based and/or generally intensive engagement by supervisors. This is particularly true for the banking sector, which is by far the most material sector.

818. Whilst the effectiveness of sanctions applied in the period under review, in general, has not been demonstrated, remedial measures have been diligently applied and followed up, and have positively affected compliance.

819. Whilst NOPCML resources have been extremely limited, its significant outreach activities - targeting all obliged entities - have had a significant impact.

820. **Romania is rated as having a moderate level of effectiveness for IO.3.**

7. LEGAL PERSONS AND ARRANGEMENTS

7.1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 5

- a) The basic features of legal persons are set out in publicly available legislation.
- b) Understanding of risk of abuse of legal persons is greater than that in the NRA report. However, the authorities do not clearly articulate what ML risks are presented by the many different types of legal persons created in Romania and, overall, the risk of use of legal persons for ML is higher than recognised by the authorities (medium level), at least to some extent.
- c) Important steps have been taken by Romania to prevent misuse of legal persons. These include the development and use of public registries and support a multi-pronged approach to collecting and accessing BO information. Implementation of this comprehensive framework is still work in progress, but the level of progress is substantial. Applications to form most legal persons are, inter alia, supported by confirmations that founder shareholders (legal owners) and initial directors have not been convicted of specified offences. Confirmation is requested also for some subsequent changes. This approach is positive in preventing legal persons being formed to facilitate crime.
- d) Greatest reliance is placed by competent authorities on: (i) a register of bank accounts held by the Fiscal Administration; and (ii) information held by banks, for accessing BO information on legal persons. Around 80% of legal persons created under Romanian legislation hold a bank account in Romania. Whilst most inspections of banks have findings in the application of CDD measures, the NBR believes that these are isolated cases. On the other hand, the supervisor has taken action to require some systemically important banks to remediate customer data. The absence of aggregated statistics on findings on the application of CDD measures by banks makes conclusions difficult.
- e) Public registers are used by competent authorities as a secondary source of information. Data provided at the time of the on-site visit shows that full BO information is held by the NTRO (the largest register) for 72% of legal persons (excluding associations and foundations). Staff numbers do not permit the NTRO to exercise a coordinating role in ensuring adequacy, accuracy, and currency of BO information. The register of associations and foundations is “not complete”, and its accuracy is subject to “material errors”. There is only limited central oversight of the formation of associations and foundations.
- f) Sanctions are not imposed in relation to late filings of basic and BO at the registers. Companies have been dissolved for failing to convert bearer shares into registered shares.

Recommended Actions

Immediate Outcome 5

- a) Both articulation of ML/TF risks, and understanding of them, should be subject to deeper assessment (including assessment of the risks of each type of legal person) so that understanding can be comprehensive and uniform, and allow risk mitigation measures to be focussed.

- b) Staff numbers should be increased at the NTRO to allow the headquarters to exercise a coordinating role in ensuring adequacy, accuracy, and currency of information provided by legal persons on both the commercial and BO registers. The MoJ should exercise a coordinating role in ensuring adequacy, accuracy, and currency of information on BO registers for associations and foundations.
- c) The NTRO, MoJ and Fiscal Administration should draw up and implement a plan for reducing the number of legal persons that have still to file BO information.
- d) Existing controls to ensure the accuracy and currency of BO information held in BO registers should be developed further to offer a comprehensive degree of effectiveness. In particular, there should be routine ongoing cooperation between registrars, supervisors and law enforcement to discuss: (i) the extent to which the registrars and the private sector hold adequate, accurate and up to date BO information; and (ii) any measures needed in this respect.
- e) Sanctions should be applied on legal persons for to failure to file accurate basic and BO information on a timely basis.

821. The relevant Immediate Outcome considered and assessed in this chapter is IO.5. The Recommendations relevant for the assessment of effectiveness under this section are R R.24-25, and elements of R.1, 10, 37 and 40.⁸¹

7.2. Immediate Outcome 5 (Legal Persons and arrangements)

822. The following types and forms of legal person are principally used (in order of greatest use): (i) limited liability companies; (ii) associations; (iii) foundations; and (iv) joint stock companies. Numbers registered are set out in Chapter 1.

7.2.1. Public availability of information on the creation and types of legal persons and arrangements

Legal persons other than associations and foundations

823. The basic features of legal persons, e.g., the minimum number of shareholders and directors and limitation of liability, are set out in legislation, which are publicly available on www.onrc.ro.

824. Standard forms are used to register such legal persons and are available at the NTRO and online (www.onrc.ro). In addition, the website of the NTRO and its online services portal contain comprehensive information on legislation and framework models of articles of incorporation. Legal staff in the NTRO also provide guidance on the legal formalities for establishing a legal person.

Associations and foundations

⁸¹ The availability of accurate and up-to-date basic and BO information is also assessed by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. In some cases, the findings may differ due to differences in the FATF and Global Forum's respective methodologies, objectives and scope of the standards.

825. Basic features of associations and foundations are also set out in legislation and standard forms available through the High Court of Cassation and Justice.

7.2.2. Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities

826. The NRA report includes an assessment of ML/TF risks associated with legal persons created in the country. The assessment considers threats (types of predicate offences and how legal persons were used) and the extent to which legal persons are owned by non-residents but does not clearly articulate what ML risks are presented by the many different types of legal persons created in Romania, e.g., use of shell companies by non-residents. Instead, there is a high-level conclusion that limited liability companies are particularly vulnerable to use (but with no substantiation). The assessment of TF is based on a number of contextual factors, rather than threats and vulnerabilities.

827. The Courts of First Instance (which incorporate associations and foundations), the two registrars of legal persons (the NTRD and the MoJ) and the registrar of fiducia (the Fiscal Administration) were not included in the NRA process (although the Fiscal Administration had been involved from other perspectives).

828. Nevertheless, discussions held by the AT with other authorities indicated greater understanding of risk than that in the NRA report. It was explained that legal persons are considered to have a medium residual risk in the NRA report on the basis that such persons have bank accounts in the country (though this is not always the case). The key risk for ML is seen as being limited liability companies with one shareholder which, in practice, can be used as shell companies. They are used most significantly for tax evasion (VAT fraud) to present illicit transactions as lawful and not to as significant an extent for other crimes. This greater understanding is also demonstrated by the case study in the box below. Legal persons are thought to facilitate about half of the country's ML, with OCGs using them in relation to corruption. The authorities consider that legal persons outside Romania are not used to any great extent by criminals within Romania (destination jurisdictions for financial flows being varied such as countries in western Europe and countries in the eastern Mediterranean) and criminals outside Romania are using legal persons incorporated in the country. These factors, along with case studies presented under Chapter 3 (IO.8), point to a higher risk than "medium" of use of legal persons for ML, at least to some extent.

829. No statistics have been provided regarding the purpose for which associations and foundations are established.

830. Discussions with the private sector also highlighted factors that had not been considered in the NRA, e.g., the extent to which: (i) lawyers, accountants or other TCSPs act as directors or equivalent of legal persons on an ongoing basis (the suggestion being that this is limited); (ii) accountants act as gatekeepers in the provision of accounting services and tax filing; and (iii) TCSP services are offered in Romania other than by lawyers and accountants, given that data provided by the Fiscal Administration had highlighted in excess of 13 000 TCSPs (though the actual figure is much lower). However, the risk that may be presented by the formation and administration of legal persons by company service providers, including lawyers, particularly those whose BO is not yet recorded in one of the central registers, is mitigated to some extent by the quite extensive analysis in the NRA of cases in which abuse has been observed in practice.

831. Regarding legal arrangements, a risk assessment of fiducia has not been undertaken to support measures to prevent misuse. The central register of fiducia administered by the Fiscal Administration contains useful information but obtaining any further information would require liaison between the headquarters of the Fiscal Administration in Bucharest and local offices in the counties. Statistics for fiducia are not held centrally. There were 51 fiducia, established throughout Romania, at the time of the AT's visit to Romania. A few of the fiducia have foreign trustees (although risk is mitigated to some extent as all fiducia must have a Romanian trustee).

832. Both articulation of the risks, and understanding of them, would benefit from deeper assessment (including assessment of the risks of each type of legal person) so that understanding can be comprehensive and uniform, and allow risk mitigation measures to be focussed.

Case study 7.1: STRs on legal persons

Many limited liability companies were incorporated with the same registered office address (a law firm) by foreign nationals and used in fraud schemes.

Within six months of incorporation, the NOPCML received ten STRs from banks regarding suspicious transactions carried out by six non-resident individuals through bank accounts opened by five Romanian limited liability companies in which they held shares and/or acted as director and administrator. Following analysis of the STRs, it was identified that the companies had the following common elements: (i) a single registered office address-- the law firm; (ii) establishment by citizens of an EU Member State; (iii) identical or similar objects/activities; and (iv) establishment around the same time.

Bank accounts opened by the five companies had received significant amounts from companies and individuals from different locations and then, on the same or following day, most of the proceeds were transferred into the accounts of Chinese companies via internet banking. In addition, banks mentioned receiving SWIFT messages that the funds collected in Romania came from fraud.

7.2.3. Mitigating measures to prevent the misuse of legal persons and arrangements

833. Steps have been taken by Romania to prevent misuse of legal persons. These include the statutory removal of bearer shares from the system. All legal persons are required to obtain and hold adequate, correct and up to date information on beneficial owners. Romania has also established a central register of BO of legal persons, a central register of owners of bank accounts and payment accounts (which includes the identity of beneficial owners) and a central register of BO of legal arrangements (i.e., fiducia or foreign trusts with a connection to Romania).

834. These important steps are considered further below and, in most cases, are still work in progress and so not yet operating with a comprehensive degree of effectiveness. The level of progress has been substantial.

7.2.4. Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons

835. Several options are available for accessing information. Basic and BO information is available in public registers maintained by the NTRD and MoJ. In addition, competent authorities may access BO information through: (i) legal persons; (ii) obliged entities; and (iii) a central register of bank accounts. In practice, greatest reliance is placed by competent authorities on the

register of bank accounts and information held by banks, with public registers used as a secondary source.

Source 1: legal persons

836. All legal persons created under Romanian law are required to obtain and hold information on beneficial owners (usually principal place of business). In turn, beneficial owners are required to provide legal persons with all information to meet this requirement to hold BO information. The definition of BO is the same as applied to covered FIs, DNFBPs and VASPs – see c.10.10. This information – which is not subsequently verified by the legal person - is the source for BO information held in domestic BO registers.

Source 2: obliged entities (all legal persons)

837. In particular, information on the BO of legal persons is available directly from: (i) banks - with around 80% of legal persons created under Romanian law holding an account at a bank in Romania⁸²; and (ii) accountants - who are being used extensively to file mandatory tax returns with the Fiscal Administration and, to a lesser extent, to prepare financial statements to support tax filing.

838. Applications to form a legal person do not need to be notarised and notaries are not commonly used in the formation of legal persons. Lawyers (obliged persons), on the other hand, are often used at the formation stage (except for associations and foundations), e.g., they draft legal documents and file applications under a power of attorney. Use is also made of TCSPs (also obliged persons).

839. As explained under IO.4, banks use information held in the domestic BO registers to verify the identity of beneficial owners – together with other information sources. These measures are positive. In the case of accountants, verification of BO - as part of CDD measures - relies on information that is already held in the registers of BO - without reference also to additional sources of evidence (to corroborate BO information that is held in the BO registers).

840. As explained under IO.3, almost all banks have been inspected annually during the period under assessment. By way of illustration, this means that the top fifteen banks assessed as presenting the highest ML/TF risk (these banks hold bank accounts for the vast majority of legal persons with bank accounts in Romania) have all been inspected on a continuous basis by the NBR. Whilst most inspections have findings in the application of CDD measures, the supervisor believes that these are isolated cases and that, generally, banks hold adequate, accurate and up to date BO information. However, some serious deficiencies in the application of CDD measures have been picked up during inspections, which have led to reviews of entire customer portfolios (including identification of BO) by some systemically important banks. Law enforcement investigations have also identified the use of bank accounts by criminals. Aggregated statistics (e.g., identifying type and seriousness of findings on application of CDD measures - by year) to support the NBR's conclusion have not been presented.

841. NOPCML inspections of accountants and lawyers have covered only a very small fraction of professionals practising in the country, and so it is difficult for the supervisor to form an overall view on compliance with CDD requirements in these diverse sectors. However, in onsite

⁸² Based on numbers of legal persons established in three counties in February and March 2022. Of the 21 000 newly established legal persons, 4 349 did not have Romanian bank accounts.

examinations conducted by the NOPCML of lawyers and accountants, cases where no BO information was held were rare.

Source 3: NTRO (legal persons others than associations and foundations)

842. The NTRO (which is accountable to the MoJ) comprises the head office in Bucharest and offices in all 42 counties. The offices and their staff are attached to courts, which incorporate legal persons. Applications are processed by the local NTRO office, and registered legal persons are entered onto a single, central register. Applications are filed within 15 days of concluding the constitutive act. A legal person does not acquire legal personality until it is registered in the trade register.

843. The NTRO has some 1 326 staff across Romania, with 211 staff working at the headquarters office and 202 in the operational office in Bucharest. Staff complements at the various offices vary, with the Bucharest offices being the largest. The larger offices are in urban areas, where there is a greater number of formations. Staff administer both the commercial register (basic information) and the BO register (see below). Staff also have other duties. The NTRO has had a shortfall in the number of staff for some years, and this has become significant (currently being 560 staff) with the retirement of a large number of public sector staff since the beginning of the pandemic. This shortfall has led to decisions on prioritisation of work; the formation of legal persons has been a greater priority than other activities such as archiving. An increase in staff numbers would allow the headquarters (which has 95 vacancies) to exercise a coordinating role in ensuring adequacy, accuracy, and currency of information on both the commercial and BO registers.

844. Applications to form a legal person can be submitted to the NTRO electronically, by post or in person, using templates available on the Registry website. The application (which is attested by a lawyer or member of staff of the NTRO) is supported by a “declaration on own responsibility” provided by a legal representative⁸³ that legal conditions specified in the Company Law are met. This will include confirmation that the founder shareholders (legal owners) and first directors have not been convicted of offences specified in the Company Law (e.g., ML, embezzlement and other types of fraud, and corruption) or excluded by a court from acting in those roles (a complementary sanction to conviction for an offence). A copy of a passport or identity card for each founder shareholder and director is also provided. In addition, where a person who is a founder shareholder or director is registered with the Fiscal Administration as a taxpayer, the NTRO requires a certificate of soundness from that administration. Responses are provided by the Fiscal Administration with commendable speed. Where a founder shareholder is not registered as a taxpayer, the NTRO requires a confirmation from the individual that they are in good standing with respective foreign tax authorities. Registered ownership information is confirmed as correct by the legal representative of the applicant.

845. The level of information provided to the NTRO is very positive. While checks at the application stage are not comprehensive and there is no check on the status of the legal representative, they go beyond ascertaining completeness of basic information as the NTRO’s IT system automatically validates addresses provided in the application against the address provided in other government records. Although rare, differences have been found and followed

⁸³ Alternatively, by its mandator with an authentic special or general power of attorney, or by a lawyer, based on a power of attorney, or by any shareholder.

up by the NTRO to ensure the application is, and therefore registered information will be, accurate.

846. Applications for incorporation have been deferred or refused. In the period between 2017 and 2021, where just over 4.2 million applications were accepted, around 0.7 million were deferred to allow the applicant to provide more information, 20 804 were withdrawn, and 143,279 were refused. Refusals are the result of not meeting statutory requirements (i.e., for providing incomplete information). Delays in providing additional data to the court, if the court has deferred its consideration of an application, are treated as a failure to meet statutory requirements and, therefore, are refused. The very good requirements to provide information on convictions and evidence of identity with the application have a deterrent effect which is positive in preventing legal persons being formed to facilitate crime.

847. After incorporation, when there is a change to the information filed at the application stage, a notification is submitted by the legal person's legal representative, together with supporting information, to the NTRO. As at the application stage, the legal representative confirms that new shareholders of limited liability companies (legal owners) and new directors (all types of legal person) have not been convicted of offences specified in the Company Law or excluded from acting as a director and provides a copy of a passport or identity card. Information on tax status is also collected, which serves as an additional validation of identity. After review of the information for completeness, including compliance with legal requirements, and consistency of addresses with governmental records, the change is registered by the NTRO within three days of receipt. As at the application stage, the nature of information required has a deterrent effect on misuse. Whilst the effect of registration of information is declarative, rather than constitutive⁸⁴, a change is enforceable under the Civil Code by a third party only after registration, which encourages timely registration of changes.

848. The NTRO has also provided statistics for 2017 to 2021 showing over 28 000 corrections of material errors to basic information have been picked up by the NTRO (based on inconsistencies detected between information provided and information already held in trade registers). In practice, therefore, the NTRO is proactively checking data it holds and taking responsibility for the accuracy of information.

849. BO information for any new legal person registered with the NTRO has been filed with the NTRO since July 2019. This includes, amongst other things: (i) full name; (ii) date and place of birth – the latter since 1 January 2022; (iii) country of domicile; and (iv) residential address for each beneficial owner. In addition, all legal persons registered before July 2019 were given until 9 June 2022 to file BO information (see c.24.6 in the TC Annex). Where there is a subsequent change in the BO of a legal person (including for pre-existing companies), a revised summary of all beneficial owners is provided to the NTRO within 15 days of that change. However, as explained under c.24.7, provisions dealing with reporting changes to BO information for pre-existing legal persons are unclear and have been subject to several changes meaning that some legal persons may not have filed changes in BO (see c.24.7 in the TC Annex).

850. Some legal persons must now also submit an annual BO declaration within 15 days of approval of their annual financial statements. These are legal persons with entities in their shareholding structure and/or which have their fiscal headquarters in: (i) non-cooperative jurisdictions for fiscal purposes; (ii) jurisdictions with a high-risk of ML/TF; and/or (iii)

⁸⁴ A change occurs at the time of the underlying act rather than at the time of registration of the act.

jurisdictions monitored by relevant international bodies for risk of ML/TF. While this requirement had only recently taken effect at the time of the on-site visit it demonstrates positive approaches to addressing risk.

851. At the time of the on-site visit, full BO information was held for 72% of legal persons required to register in the NTRO⁸⁵. No BO information is held for the remaining 28% (over 350 000 legal persons), around a third of which have suspended activities or are in dissolution, judicial reorganisation, or bankruptcy processes. The authorities have explained that banks do not open accounts for Romanian legal persons for which no BO information is recorded in the BO register, which encourages compliance with the filing requirement. However, this does not help in cases when Romanian legal persons bank only abroad.

852. When submitting a BO declaration, the NTRO checks that the legal representative doing so is a director of the legal person and that the legal person is registered in the trade register and looks for mismatches regarding identification data. It does not enter data in the register that it is not satisfied meets requirements of the AML/CFT Law. There is also a formal mechanism in which discrepancies can be reported to the NTRO for investigation (NOPCML before 2022), if noted by parties accessing the register. In 2021, 14 such discrepancies had been reported to the NTRO.

853. During 2021, the NOPCML verified compliance with the obligation to submit declarations of change in BO as part of its ongoing supervision of obliged entities (mainly DNFBPs). This identified ten obliged entities that had failed to submit such a declaration (all of which were aware of the requirement to do so). Otherwise, no specific checks are conducted by the NTRO to determine whether all BO information has been filed, the accuracy of that information, or whether it has been filed on time.

854. In addition, BO of legal persons is checked as part of tax investigations conducted by the Fiscal Administration. A very small percentage of tax investigations have highlighted discrepancies in information held in the BO registries.

Source 4: Ministry of Justice (associations and foundation)

855. Judicial staff are involved in forming associations and foundations in the 171 courts across the country. It is not possible to quantify the number of full-time equivalent staff involved in this formation work, but this routine work accounts only for a small part of the day-to-day activities of judicial officers and is non-contentious. Four officers of the MoJ maintain the central BO register of associations and foundations. Their role is limited to approving the use of names and does not extend to coordination of the work of local officials. Resourcing issues are not evident.

856. Associations and foundations are registered by a court in the county of the applicant. Information is input into a central register, which was established in 2000. A template is available for applications for incorporation, through the High Court of Cassation and Justice. Subject to minimum legal requirements being met, process and application requirements might differ as between different courts. In all cases, the articles are submitted along with details of the registered office, and, where a founder or director is registered with the Fiscal Administration as a taxpayer, the court requires a certificate of soundness. Confirmation of the identity of founders and directors, e.g., copy of a photograph page of a passport, is also needed before the court will allow incorporation. If a document is issued in a foreign language, the applicant shall attach a

⁸⁵ The percentage has since increased to 76%.

certified copy – signed by the applicant – together with a legalised translation issued by an authorised translator.

857. Applications for incorporation are dealt with in three days of the application being submitted. There are no express checks on the data provided although, as with the NTR0, requirements to provide information on convictions and evidence of identity with the application have a deterrent effect on use. The MoJ and the court official met by the AT estimated that almost all applications are filed by individuals who are founders or (to a lesser extent) by a lawyer (that is an obliged person required to apply CDD measures).

858. Statistics are not maintained in relation to rejected applications but there are cases where the court has prolonged the deadline for dealing with an application so that the applicant has more time to meet the requirements and there are rejections where the documents are not complete or where the certificate of soundness of tax conduct is not adequate.

859. Any change in the composition of the organisation is registered, upon request, by the court, but there is no deadline for notifying the court of any change. Nor are the same checks conducted as at the time of registration.

860. The Ministry's website lists associations and foundations that are registered. The register itself contains: (i) name of the legal person; (ii) registration date; (iii) name of the registering court; (iv) registered address; (iv) names of founders and directors; (v) information on objectives; (vi) information on assets; (vii) information on affiliation to any federation; (viii) information on connections to any international network; and (ix) information on any branches.

861. A register of BO has been established by the MoJ. It is populated manually and comprises: (i) basic information data lifted directly from the central register that holds basic information on founders, directors etc (which are also beneficial owners); and (ii) declarations of other BOs made to the MoJ under the AML/CFT Law (upon registration and when there is a change). Those associations and foundations established before creation of the central register of BO were given until 9 June 2022 to submit BO information under the AML/CFT Law. The MoJ has explained that the register of BO is not complete, and its accuracy is subject to material errors.

Source 5: Fiscal Administration – register of bank accounts (all legal persons)

862. The Fiscal Administration administers a register of bank and payment accounts. This was first established in 2015 but was upgraded in October 2020 to also hold BO information. In addition to this information, the register holds: (i) name of the account holder; (ii) name of persons who have access to the account; (iii) information on new and closed accounts; (iv) dates of opening and closing accounts; and (v) type and currency of the account. Banks and PIs file information on new accounts and changes to existing accounts each business day. Therefore, the Fiscal Administration has significant information on each bank account in Romania held by a legal person.

863. The Fiscal Administration's data quality department (seven staff), established in 2022, has been actively engaged in ensuring that BO information is held for all active accounts on the register. In addition, the Fiscal Administration checks BO information in the register against TFS lists (sample basis) and checks BO details as part of its tax investigations (unrelated to operation of the register). A very small percentage of tax investigations have highlighted discrepancies in information held in the register.

864. As mentioned above, it is estimated that 80% of legal persons operate an account with a bank in Romania.

Access to basic and BO information sources

865. Basic information recorded by the NTRO and MoJ is publicly available. It is estimated that: (i) around 1 000 requests for extracts are made to NTRO each day, almost all coming from obliged entities; and (ii) around 70 requests for extracts are made to the Ministry each day (associations and foundations), more than half originating from founders, and almost all the remainder being directly or indirectly from banks.

866. The BO register maintained by the NTRO is open to the public. Some personal data held is not available on the register. Authorities and obliged entities can access the register of BO by setting up an account on the services portal of the NTRO. Requests for data can also be made in person, by post and electronically, and the NTRO usually responds within five days. The NTRO considers that all such requests for BO information have had a response. On occasion, a response is provided by military courier if the request from an authority with access to such couriers (indicating urgency) was provided in that form. According to statistics provided by the NTRO, the overwhelming majority of requests in 2021 (just under 50 000) came from obliged entities using the online portal. There was limited recorded use of the register by the NOPCML and supervisors and no recorded use by law enforcement.

867. At the time of the on-site visit, there was no direct public access to the register of BO maintained by the MoJ. Instead, information is available on request (by e-mail) to the Ministry and is provided within one to five working days, depending upon the volume of requests. According to statistics provided by the MoJ, requests come predominantly from public notaries and other obliged entities. No requests have been recorded from law enforcement, supervisors, or the NOPCML.

868. In the period up to the time of the onsite visit, the Fiscal Administration had received around 160 requests for information held in the central register of bank and payment accounts. Most requests were internal (fraud department) and the balance came from prosecutors (43) and county courts. No requests were recorded from law enforcement.

869. Notwithstanding these statistics, which point to there being a technical issue with record-keeping, LEAs have explained that they do make full use of all the above registers. In the case of a criminal investigation of a legal person, reference is first made to BO information recorded in the register of bank and payment accounts (around 200 times per month (estimate)). This is followed by the collection of BO information from banks using powers to compel the provision of information. Information from both sources is then compared to information that is held in the BO registers (and the land register).

870. Whilst the Police do not recall any discrepancies between BO information recorded in the various registers and data obtained through banks, prosecutors have explained that, based on investigations conducted in the past two to three years (where more historical activity has been investigated), BO information held by banks has been reliable in around 50% of cases, and they have noted undetected use of nominee shareholders. They accept that the situation may have improved more recently.

871. Where a legal person does not hold a bank account in Romania, then other sources are used: (i) ANABI (agency tasked with identifying and tracing assets) where assets may be subject to precautionary measures during criminal judicial proceedings, extended or special confiscation; (ii) the NOPCML-FIU; and (iii) police cooperation channels.

7.2.5. Timely access to adequate, accurate and current basic and beneficial ownership information on legal arrangements

872. A number of options are available for accessing information on domestic and foreign trusts: (i) obliged entities – see above; (ii) registers of basic and BO information (Fiscal Administration – fiducia and foreign trusts); (iii) register of bank accounts – see above; (iv) Fiscal Administration-- see above; and (v) other sources – see above. In practice, it has not been necessary for competent authorities to request basic and BO information on trusts, but competent authorities would follow the same investigatory approach summarised above for legal persons.

Fiscal Administration-- register of fiducia

873. The head office of the Fiscal Administration in Bucharest and each county office acts independently on fiducia matters.

874. The Fiscal Administration administers a register of fiducia. The trust contract and its subsequent amendments are registered with the Fiscal Administration at the request of the trustee (or one of the trustees where there is more than one), under penalty of absolute nullity of the contract, within one month from the date of conclusion. Registration is requested by submitting a standard form together with the trust contract to the local office of the Fiscal Administration. Local offices input data into a single, central register – staff cover a variety of tasks rather than being dedicated to fiducia activities. The register contains the date of registration, the name of the fiducia, the names of the founder, trustee, beneficiary, and any other type of beneficial owner (unspecified). Information on the founders, trustees, and beneficiaries also includes their tax identification number, their address and email address. Further information is required from other types of beneficial owner (unspecified), namely the date of birth, identification card number, nationality, country of residence, and the capacity in which they are a beneficial owner. Whilst the registration order for a fiducia is public, information contained in contracts is not public.

875. In accordance with the Civil Code, each fiducia has a local trustee, which must be a FI, lawyer or notary in Romania that is an obliged person subject to CDD requirements. Fiducia may also have one or more foreign trustees if they are based in an EU Member State. Any of the trustees can be responsible for filing the application **and** changes to that information after registration.

876. Application documentation is checked for completeness and internal consistency by the Fiscal Administration. While there are no other checks, trustees confirm as part of the application that they are aware of the penalties for providing inaccurate information to the Fiscal Administration.

877. Changes to data are filed within one month, although filings are not checked, and the Fiscal Administration cannot be aware if there has been a change which has not been advised to it. If a fiducia is terminated earlier than the period specified in the deed, a statement of cessation of the fiducia is filed with the Fiscal Administration.

Fiscal Administration – register of trusts

878. In practice, the register of fiducia (domestic trusts) under the Civil Code acts as the register of trusts and similar legal arrangements under the AML/CFT Law. Whilst foreign trusts are expected to register where they have a business relationship or purchase real estate in Romania (Art. 19(5¹) of the AML/CFT Law), no foreign trusts have been registered in Romania. No information has been provided on the extent to which trusts are used in practice in Romania,

though it is expected to be low. BO information in the register is open to competent authorities, obliged entities and any person able to demonstrate a “legitimate interest” or who is otherwise linked to the arrangement through an online portal run by the Fiscal Administration.

7.2.6. Effectiveness, proportionality and dissuasiveness of sanctions

879. Sanctions are not imposed in relation to late filings of basic and BO in the registers.

880. The NTR0 was able to provide statistics for the number of legal persons which have been struck off at its instigation. With regard to dissolutions promoted by the NTR0, the figures are as follows: 2017 – 8 880; 2018 – 4 883; 2019 – 6 509; 2020 – 2 923; and 2021 – 3 178. None relate to failure to provide declarations of basic or BO information.

881. During the period under review, 7,176 associations and foundations were dissolved (or in process of dissolution) or struck off, showing proactive engagement in this area. However, it is not clear what the reasons were for dissolution or strike off.

882. The NOPCML did not act against the ten persons that had failed to disclose changes of BO information in accordance with the law, given extensions that had been made to transitional reporting requirements because of Covid.

883. Based on information held on bearer shares in the trade register, the NTR0 has requested dissolution of 84 companies for failing to convert bearer shares into registered shares, of which 62 were accepted by the court. In most cases, the court declined to dissolve the company based on remedial action taken post application to the court.

Overall conclusions on IO.5

884. Important steps have been taken to develop and use public registries and support a multi-pronged approach to collecting and accessing BO information. Implementation of this comprehensive framework, whilst substantial, is still work in progress so not yet operating with a comprehensive degree of effectiveness.

885. In practice, greatest reliance is placed on banks to hold BO information on legal persons (including indirectly through the register of bank accounts). Around 80% of legal persons established under Romanian legislation hold bank accounts, where the application of CDD measures, including for BO, is overseen by the NBR – in many cases on an annual basis. Supervisory findings presented in this area are mixed and they do not include aggregated statistics. Accordingly, whilst there is evidence that banks hold accurate and current BO information, it is not complete. However, taken together with BO information held in public registries and by legal persons themselves, the AT considers it reasonable to conclude that more than 80% of BO information will be available through one of the sources available to law enforcement, and so BO information is available to some extent.

886. ML risks presented by the many different types of legal persons created in Romania are not clearly articulated, and, overall, the risk of use of legal persons for ML is higher than recognised, at least to some extent.

887. Sanctions are not imposed in relation to late filings of basic and BO at the registers, though companies have been dissolved for failing to convert bearer shares into registered shares.

888. Taking account of the above, major, but not fundamental, improvements are needed. **Romania is rated as having a moderate level of effectiveness for IO.5.**

8. INTERNATIONAL COOPERATION

8.1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 2

- a) Romania has a sound legal framework for international cooperation that allows for the provision of MLA and extradition across the range of international co-operation requests. Input received from the FATF Global Network is generally positive.
- b) Romania does not have a central case management system for handling and following the flow and the lifecycle of MLA requests, nor formalised guidelines for prioritisation of incoming requests. This significantly hinders the authorities' ability to monitor and follow up on requests. Notwithstanding, there are elements of case management in operation with limited functionality and the authorities are to be commended on the timeliness of reported responses, showing that the limitations in prioritisation have not hindered average response times. However, a significant lack of qualitative data and statistics seriously limits the country's ability to demonstrate effectiveness comprehensively.
- c) Romania seeks MLA to pursue ML and predicate offence investigations to some extent. There is limited number of requests sent for seizing assets to foreign jurisdiction and lack of statistics and cases on confiscation requests. This is despite the fact that, especially in ML cases, assets are often moved abroad. The low numbers of requests that relate to seeking foreign assistance in TF is of some concern.
- d) The NOPCML-FIU is generally active in FIU-to-FIU cooperation, however, there were significant delays in handling foreign requests until the beginning of 2022. LEAs use informal channels of cooperation in ML and predicate offenses. A very positive element of the Romanian system is the large number of JITs that Romania has initiated and participates in.
- e) The NBR and FSA demonstrate proactive international cooperation. The extent to which the NOPCML, as a supervisor, and other supervisory authorities (NGO, SRBs) cooperate effectively cannot be determined due to limited data available.
- f) Romania provides and responds to foreign requests for cooperation in identifying and exchanging basic and BO information of legal persons and arrangements. However, limitations might hinder the accuracy of BO information provided to foreign counterparts.

Recommended Actions

Immediate Outcome 2

- a) Romania should develop central case management system, which would allow the country to ensure timely execution and oversight of MLA and extradition requests and follow up actions. Formal MLA prioritisation process and guidelines should be established by all competent authorities.
- b) Romania should develop processes for gathering comprehensive data and statistics on international cooperation by all competent authorities to evaluate the effectiveness and efficiency of the country's MLA and extradition processes.

c) In support of legislative requirements, Romania should produce clear guidance for all prosecutor's offices to proactively seek international cooperation ; and increase the number of outgoing requests to pursue ML/TF investigations where crimes have been committed abroad or otherwise have a foreign nexus. Particular attention should be given to seeking assistance regarding seizure and confiscation of assets moved abroad.

d) The authorities should regularly seek feedback from foreign counterparties about the quality of BO information provided.

889. The relevant Immediate Outcome considered and assessed in this chapter is IO.2. The Recommendations relevant for the assessment of effectiveness under this section are R.36-40 and elements of R.9, 15, 24, 25 and 32.

8.2. Immediate Outcome 2 (International Cooperation)

890. International cooperation is of significant importance to Romania due to its risk profile, geographical location (criminal transit routes (Western-Balkan Route) and border country of the EU), significant diaspora of Romanians living abroad and the fact that ML and TF have predominantly international components. The above expose Romania amongst other things, to illegal trafficking of human beings, drugs and illicit goods by OCGs with an international nexus. Romania has long land borders with EU Member States of Hungary and Bulgaria, EU candidate country Serbia, as well as with Ukraine and Moldova. The border and ports on the Black Sea make Romania a gateway also for illicit international trade and trafficking. International cooperation follows Romania's risk profile and is more active with neighbouring countries and those where significant Romanian numbers of diaspora are resident.

8.2.1. Providing constructive and timely MLA and extradition

891. Romania has a comprehensive legal framework to provide MLA and extradition in relation to ML, associated predicates, and TF. Romania actively provides international cooperation. Foreign jurisdictions have generally commended Romania for providing international assistance, however, some countries highlight timeliness of responses as an aspect that needs further improvement.

892. Romanian authorities can provide a wide range of international legal assistance based on international legal instruments, such as UN and Council of Europe conventions and the EU legal framework, as well as bilateral and multilateral treaties and MoUs (see R.36- R.40). Romania accepts MLA requests in English, French and Romanian languages. There are internal processes in place for the central authorities to receive, validate conformity of incoming requests with formal conditions, and execute or transmit requests to the competent national authorities for execution.

MLA

893. There are two central authorities responsible for receiving MLA requests: the MoJ and the POHCCJ. Based on material competencies, MLA requests formulated during criminal investigations and prosecutions are divided between POHCCJ substructures, namely, IJCS (International Judicial Cooperation Service), NAD and DIOCT. The IJCS, NAD and DIOCT are also the competent authorities in the case of requests for international legal assistance covered by the

direct cooperation regime, which regulates European Investigative Orders (EIOs) used with EU counterparts.

894. Dependent on the predicate offences referred to in the MLA, foreign requests are divided between different subordinate structures of the POHCCJ for execution. The recipients are special judicial directorates, namely, NAD and DIOCT, or, dependent on the geographical location, 235 prosecutors' offices attached to the Appellate Courts, County Courts and District Courts, which are responsible for prosecuting predicate offences and therefore have competence in judicial cooperation in criminal matters. The IJCS is the recipient of most incoming MLA requests.

895. The MoJ checks that incoming requests meet necessary technical requirements and then submits the incoming requests for execution to prosecutor's office or court. MLA requests received during trial or execution stages are forwarded to the respective competent Romanian courts.

896. As intended under the EU's direct cooperation regime, EIOs can be sent directly to NAD, DIOCT or 235 prosecutor's offices attached to Appellate Courts, County Courts and District Courts, in line with an on-line tool-- Judicial Atlas⁸⁶ - provided by the European Judicial Network to determine the competent authority for executing EIOs. This should expedite submission and execution of EIOs. Despite this, regarding the majority of predicate offences and ML, EIOs are still received by the central authority in the POHCCJ creating an additional intermediate level before these are sent to the regional prosecutors' offices responsible for actual execution.

897. Romania does not have a centralised case management system where all incoming and outgoing MLA requests are registered. Thus, the authorities advised that, in practice, it may take weeks to reroute an incoming MLA request that the MoJ and the POHCCJ are unable to monitor the status of requests after they are sent for execution to regional prosecutors' offices. Moreover, due to the absence of a comprehensive centralised case management system, the collection and processing of data by the regional offices of the POHCCJ entails manual searches in different regional archives which limits efficiency; as a result, there were several cases where the connection between international judicial cooperation activity and a local criminal case file could not be established. This shows that the central authorities do not have systematic oversight measures to monitor the international cooperation process as a whole. This combined with a lack of reliable and comprehensive statistics collected by the central authorities, namely the MoJ and the POHCCJ, and limited case studies and examples, demonstrates that the international cooperation system in Romania is effective to some extent only.

898. There are no internal guidelines to ensure clear and uniform processes for timely prioritisation and execution of incoming MLA requests. However, in practice the authorities advised that they consider the following criteria: (i) deadlines set by the authority requesting MLA; (ii) specific deadlines for execution provided by applicable international instruments; (iii) the nature and severity of the crimes; (iv) risk of concealment of the evidence; (v) safety of the victim; (vi) the date of the crime, whether any defendants have been arrested, and the duration of the proceedings; and (vi) the issuance of a warrant with a deadline (usually 30 days) authorising a special investigative measure that constitutes the object of the request (obtaining financial transactions), etc.

899. Whilst the MoJ decides priority on a case-by-case basis and instructs relevant stakeholders involved, the POHCCJ does not prioritise or set deadlines for requests that are sent

⁸⁶ <https://www.ejn-crimjust.europa.eu/ejn/AtlasChooseCountry/EN>

to executing prosecutor's offices. However, MLA requests are executed by the POHCCJ and specialised prosecutors' offices on a timely basis. This may be attributed to the fact that Romanian legislation provides short deadlines for responding, especially for extradition proceedings and under the direct cooperation regime between EU Member States, which lays the foundation for short average response times. Furthermore, Romanian LEAs and judicial authorities received direct access to several vital national databases in mid-2021, which were previously accessible only on written request and therefore might have contributed to delays when collecting data for the execution of requests.

900. The MoJ has not provided statistics on incoming and outgoing MLA requests. MLA statistics (see table 8.1) have been provided by the POHCCJ and specialised prosecutors' offices, namely NAD and DIOCT. Although the POHCCJ made an effort to consolidate the data, including statistics from 235 regional prosecutors' offices, the AT was advised that it is not possible to verify reliability of statistics collected from regional offices due to manual data collection since regional prosecutors' offices keep their records in different format and in varying degree of details.

901. In general, MLA cooperation provided by the specialised prosecutors' offices is active and of a good quality. This is supported by feedback from a large majority of jurisdictions that have requested MLA or other international legal assistance, which indicates that Romania provides in general timely and good quality information. Some countries, however, highlight timeliness of responses as an aspect that needs further improvement. Additionally, feedback from foreign jurisdictions indicates that Romanian counterparts were accessible by telephone and e-mail and usually responded quickly to additional inquiries regarding MLA requests.

902. The authorities did not provide statistics on predicate offences related to MLA and EIO requests. However, the AT was advised that incoming requests for MLA often involve fraud, organised theft, cybercrime, human trafficking and drug trafficking.

Table 8.1: Incoming MLA requests on ML

| | 2017 | | 2018 | | 2019 | | 2020 | | 2021 | | 30.06. 2022 | |
|---------------------------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|-------------|---------|
| | ML A | EI O | ML A | EI O |
| TOTAL, of which: | 24 | 47 | 13 | 58 | 25 | 12 8 | 28 | 13 8 | 39 | 16 3 | 20 | 97 |
| POHCCJ | 10 | 47 | 6 | 58 | 8 | 90 | 8 | 87 | 10 | 10 2 | 10 | n/a |
| NAD | 6 | n/a | 4 | n/a | 4 | 2 | 3 | 2 | 5 | 1 | 0 | n/a |
| DIOCT | 8 | n/a | 3 | n/a | 13 | 36 | 17 | 49 | 24 | 60 | 10 | 33 |
| Pending | n/a | n/a |
| Refused | 1 | 8 | 1 | 6 | 0 | 14 | 6 | 15 | 0 | 11 | 1 | 4 |
| Executed | 23 | 38 | 12 | 56 | 25 | 12 1 | 24 | 12 4 | 39 | 11 2 | 11 | 67 |
| Av. execution time (in months) | 5 | 3 | 3 | 4 | 3 | 4 | 4 | 3 | 5 | 3 | 4 | 2 |

* The above table does not have separate classification of TF as the authorities advised that there were no TF related MLAs received from foreign jurisdictions under the review period.

903. While the above statistics are not complete for the reasons discussed above, it nevertheless shows an increase of incoming EIO requests for ML and the increasing role of DIOCT during the review period.

904. The refusal rate of over 10% for EIOs is high, but the Romanian authorities advised that some requests could not be executed due to well justified reasons e.g., the assets or entities were not identified in Romania. Some requests were returned to the requesting state due to material deficiencies, e.g., request was incomplete or not translated.

905. From the data on incoming MLA requests broken down by originating jurisdiction, it is evident that the largest number of requests for MLA between 2017 and the first half of 2022 came from Germany (122 MLA requests), France (70 MLA requests) and Italy (62 MLA requests), followed by Belgium, Bulgaria, the Czech Republic, Spain, Switzerland and the USA. However, the statistics provided by the authorities on all incoming MLA requests related to ML/TF has a sizable mismatch with the number of foreign MLA requests broken down by originating country. This might be attributed to the fact that the MoJ did not make statistics on MLA available, and statistics gathered from the regional prosecutors' offices is not complete (see above).

906. The average execution time of MLA requests is reasonable - approximately 4 months. Whilst access of LEAs and judicial authorities to the national databases has improved, it had no impact on the average time of execution of MLA requests (see table 8.1.). However, in case of EIOs, the time for execution has slightly decreased over the years.

Extradition

907. The MoJ performs checks that incoming requests meet necessary technical requirements, and, when they do, sends extradition requests to the prosecutors' offices attached to the Appellate Courts. European Arrest Warrants (EAWs) can be addressed to the MoJ, but usually are sent directly to the prosecutors' offices attached to the Appellate Courts depending on the location of the person to be extradited. In case there are "red notices" on extradition, information from foreign counterparts is also shared with the Interpol contact point in the Police, which is constantly operational, and therefore priority can be given to urgent requests.

908. Romanian authorities advised that the statistics presented in table 8.2 are incomplete as data does not cover all courts.

Table 8.2: Incoming extradition requests for ML offences*

| | 2017 | | 2018 | | 2019 | | 2020 | | 2021 | | 30.06.2022 | |
|-----------------|----------|-----------|-----------|-----------|----------|-----------|----------|-----------|----------|-----------|------------|-----------|
| | EXT | EAW | EXT | EAW | EXT | EAW | EXT | EAW | EXT | EAW | EXT | EAW |
| TOTAL ML | 2 | 25 | 13 | 16 | 1 | 27 | 7 | 41 | 3 | 33 | 1 | 21 |
| Pending | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | n/a |
| Refused | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 2 | 0 | 1 |
| Executed | 2 | 25 | 13 | 16 | 1 | 27 | 4 | 40 | 3 | 29 | 1 | 15 |

* The above table does not have separate classification of TF as the authorities informed that there were no TF related extradition requests received from foreign jurisdictions under the review period.

909. Although exact average time of execution broken down by year was not made available to the AT, according to the authorities' estimation, the average execution time of EAWs by different Courts of Appeal falls between 2.5 days and 2 months. The time of execution of the EAW is calculated based on the date of completion of the court proceedings rather than the actual surrender date. Only one foreign jurisdiction, when providing feedback, expressed concerns

relating to circumstances when Romania faced legal difficulties to provide temporary surrender due to pending proceedings.

910. The authorities advised that extradition requests from non-EU countries related to ML were received only from the USA, with which Romania has signed a bilateral agreement.

911. No data has been provided on incoming requests for extradition broken down by: (i) predicate offence; (ii) EU Member State requesting extradition; or (iii) reasons for refusal. Although the average time of execution of extradition requests is reasonable, and feedback from foreign jurisdictions does not indicate major concerns, limitations linked to incomplete data and statistics, including relevant case examples, apply here.

Seizures and confiscations

912. The legal framework allows for international cooperation on seizure and confiscation of assets (see R.38). The authorities explained that seizure requests are executed by prosecutors' offices and confiscation requests executed by the courts, however, difficulties linked to locating perpetrators and their assets are observed.

Table 8.3: Incoming requests on seizures in ML*

| | 2017 | | 2018 | | 2019 | | 2020 | | 2021 | | 30.06.2022 | |
|-----------------------|------|-------|------|-------|------|-------|------|-------|------|-------|------------|-------|
| Offence | ML | Other | ML | Other |
| Total received | 6 | 0 | 4 | 0 | 11 | 0 | 6 | 1 | 9 | 2 | 3 | 0 |
| Executed | 6 | 0 | 4 | 0 | 11 | 0 | 4 | 1 | 7 | 2 | 2 | 0 |
| Refused | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 1 | 0 |
| Pending | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 3 | 0 | 3 | 0 |

**The above table does not have separate classification of TF as the authorities informed that there were no TF related incoming requests under the review period.*

913. Comprehensive statistics on ML-related seizures and confiscation requests were not made available, including a breakdown of requests by associated predicate offence and requesting country. Data was not provided on reasons for refused and pending requests. Lack of granularity of data makes it difficult to assess if Romania is fully effective in providing constructive assistance in seizing and confiscation. However, the authorities advised that the IT system ROARMIS (Romanian Assets Recovery and Management Integrated System) is in the final stages of development and due for deployment at the beginning of 2023 which will significantly enhance the collection and analysis of data and statistics.

914. The number of requests on seizures (see table 8.3) seem overly low considering Romania's size and risk profile. Additionally, the authorities informed that the number of incoming requests for ML seizures are identical to incoming requests for confiscations. However, the case example provided below demonstrates the capacity of the Romanian authorities to provide international assistance and seize assets.

Case study 8.1: of a successful execution of an incoming MLA request on ML (related to the main threats faced by the country)

In 2021, Romania received a foreign request related to confiscation of real estate located in Romania. The request was based on an investigation in a foreign country in relation to fraud, organised crime, abuse of office and ML. The perpetrator had dual citizenship of Romania and the

requesting state; he committed the predicate offences in the requesting state, but funds obtained from corruption were partially laundered in Romania.

The NAD identified that ownership of the real estate subject to confiscation had changed and, subsequently, this information was communicated to the requesting authority. This enabled the requesting authority to issue an additional MLA request as the new owner of the property was also subject to the investigation (change of ownership to evade confiscation). The Romanian courts approved the request and seized real estate. The requesting state is yet to send a confiscation order to Romania.

915. Between 2017 and 2021, the POHCCJ (excluding requests received by the specialised prosecutors' offices - NAD and DIOCT) received 29 requests for seizure of assets from foreign jurisdictions but could not distinguish how many of those were related to ML/TF and predicates. The country executed 23 (out of 29) requests (totalling around EUR 12.2 million) and refused only two.

916. The NAMSA, which also acts as the Romanian asset recovery office, is the competent body to dispose assets obtained following the execution of a confiscation order and has the mandate to negotiate and sign asset sharing agreements. NAMSA has recorded the execution of 41 international confiscation orders, but did not specify how many of those were related to ML. The case studies provided by NAMSA (see IO.8) indicate that the Romanian authorities have been able to confiscate assets on the request of different jurisdictions and share the confiscated assets based on bilateral agreements.

917. Overall, the country executes incoming requests for seizure and confiscation of criminal proceeds (only two were refused under the review period), however, due to a lack of comprehensive data, statistics and case examples, it cannot be concluded that Romania is fully effective in handling international requests for seizure and confiscation.

8.2.2. Seeking timely legal assistance to pursue domestic ML, associated predicates and TF cases with transnational elements

MLA

918. Under the review period, Romania sought MLA in relation to ML and predicate offences in an appropriate and timely manner to some extent. Whilst no comprehensive statistics are available, the authorities estimate that the large majority of MLA requests related to corruption, cyber-crime and tax evasion mandate of the specialised prosecutors' offices, namely NAD and DIOCT). Corruption and tax evasion are amongst the most prevalent crimes in Romania and thus it is positive that assistance is sought regarding these crimes; however, other prevalent crimes, such as drug trafficking, feature in outgoing MLA quite rarely. This is not fully in line with Romania's risk context. Additionally, no information explaining trends (e.g., significant increase and decrease of outgoing requests over the review period) has been provided.

Table 8.4: Outgoing MLA requests related to ML⁸⁷

| | 2017 | | 2018 | | 2019 | | 2020 | | 2021 | | 30.06. 2022 | |
|-------------------------|------|-----|------|-----|------|-----|------|-----|------|-----|-------------|-----|
| | MLA | EIO | ML A | EIO |
| TOTAL, of which: | 39 | 25 | 36 | 16 | 45 | 274 | 67 | 168 | 48 | 232 | 11 | 73 |
| POHCCJ | 9 | 25 | 3 | 9 | 3 | 13 | 3 | 12 | 5 | 16 | 0 | 25 |
| NAD | 23 | 0 | 28 | 7 | 7 | 18 | 30 | 21 | 6 | 2 | 0 | 0 |
| DIOCT | 7 | 0 | 5 | 0 | 35 | 243 | 34 | 135 | 37 | 214 | 11 | 48 |
| Pending | n/a | n/a | n/a | n/a |
| Refused | 2 | n/a | n/a | n/a |
| Executed | 36 | 25 | 34 | 16 | 45 | 273 | 67 | 167 | 24 | 206 | 3 | 25 |

* The above table does not have classification of TF as there was no TF related MLAs sent to foreign jurisdictions under the review period.

919. Available statistics demonstrate a significant increase in outgoing requests since 2019 by the DIOCT, the reasons for which were not explained by the authorities. Activity of the POHCCJ, which is responsible for investigating standalone ML and most other predicate offences that do not fall under the responsibility of the DIOCT and NAD, is very limited. Additionally, no data on predicate offences and average execution time was made available to the AT. Due to the lack of data and statistics, the AT is unable to conclude whether assistance is effectively sought. In addition, the authorities did not analyse pending and refused requests and data provided on all outgoing MLA requests related to ML/TF (referred in table 8.4) does not correspond to the number of MLA requests broken down by destination country (see below).

920. Throughout the period under review, approximately one third of requests for MLAs were sent to Germany (302), followed by Spain (52), the Netherlands (46), the United Kingdom (45), Italy (44), Hungary (43) and Austria (40). These destinations mirror Romania's context to a good extent due to large Romanian diaspora living in some of the above listed countries, as well as links with some countries regarding human and drug trafficking. However, as discussed above, most MLA requests relate to corruption, cyber-crime, and tax evasion.

Extradition

921. Extradition requests (incl. EAWs) are sent in relation to predicate offences, but no detailed breakdown was made available to the AT. No extradition requests have been sent in relation to TF. The statistics shown in table 8.5 are not complete as only a few courts were able to report refusals of outgoing EAWs.

Table 8.5: Outgoing extradition requests

| | 2017 | | 2018 | | 2019 | | 2020 | | 2021 | | 30.06. 2022 | |
|--------------------------------------|------|------|------|------|------|------|------|------|------|------|-------------|------|
| | EX T | EA W | EX T | EA W |
| All outgoing EXT/EAW requests | n/a | 1350 | n/a | 1067 | n/a | 1373 | n/a | 755 | n/a | 886 | n/a | n/a |

⁸⁷ Accounting method used - a request sent in one year may be answered the following year.

| | | | | | | | | | | | | |
|---|----------|----------|----------|----------|----------|-----------|----------|----------|----------|----------|----------|----------|
| Outgoing extradition requests related to ML/TF | 6 | 7 | 0 | 9 | 5 | 10 | 6 | 6 | 1 | 3 | 1 | 0 |
| Pending | n/a | n/a | n/a | n/a | 3 | n/a | 1 | n/a | 1 | n/a | 1 | n/a |
| Refused | 4 | n/a | n/a | 5 | 1 | 1 | 1 | 2 | n/a | 2 | n/a | n/a |
| Executed | 2 | 1 | n/a | 2 | 1 | 6 | 4 | 1 | n/a | 1 | n/a | n/a |

922. The above table demonstrates a significant proportion of refusals of outgoing ML extradition requests. The authorities advised that grounds for doing so included refusal to extradite a national of the country requested, refusal on the basis of granting asylum, preference for deportation, and absence of dual criminality. The Romanian authorities also advised that they face some complications with extradition from Greece and Italy. No information was provided on reasons for pending cases, where some extradition requests have not been executed for more than 3 years.

923. While a number of extradition requests have been sent, due to the lack of information on predicate offences and countries involved, the AT is unable to conclude that outgoing extradition requests are in line with the risk profile of Romania. In addition, due to incomplete statistics, the AT cannot conclude that the system is fully effective in this respect.

Seizures and confiscations

924. The number of outgoing requests for seizure of assets is low. Only statistics on requests sent by the NAD and DIOCT were made available, and no data was provided on requests for seizure sent by other competent bodies. All outgoing seizure requests issued by the NAD were related to corruption. The remaining seizure requests for other offences were initiated by DIOCT. There were no outgoing requests in relation to TF.

925. Romania did not provide any statistics on confiscation requests sent but discussed an example of one sent to Monaco.

926. Although Romania presented some evidence that it seeks international assistance regarding seizures, the numbers made available to the AT are very low. This, combined with absence of statistics on confiscation requests, shows that Romania can demonstrate the effectiveness in this field only to a very limited extent.

Table 8.6: Outgoing seizure requests by NAD and DIOCT

| | 2017 | | 2018 | | 2019 | | 2020 | | 2021 | | 30.06.2022 | |
|-------------------|------|-------|------|-------|------|-------|------|-------|------|-------|------------|-------|
| Offence | ML | Other | ML | Other |
| Total sent | 5 | 0 | 3 | 0 | 5 | 1 | 0 | 7 | 6 | 7 | 0 | 4 |
| Executed | 5 | 0 | 3 | 0 | 5 | 0 | 0 | 7 | 6 | 7 | 0 | 4 |

8.2.3. Seeking other forms of international cooperation for AML/CFT purposes

927. Romanian authorities have concluded a number of bilateral and multilateral MOUs, agreements, and treaties with foreign jurisdictions in the fields of financial intelligence, supervision, and law enforcement.

928. No statistics or case examples have been provided of outgoing TF-related requests by the NOPCML-FIU or other Romanian authorities. Although terrorism risk is assessed as low by the Romanian authorities, taking account of TF-related STRs, requests from other countries and global notion that several cross-border predicate offences (including drug trafficking and human

trafficking) could be also used for TF, the lack of international cooperation by Romanian authorities in seeking foreign assistance in relation to TF is of some concern.

NOPCML-FIU

929. There are no legal barriers for efficient FIU-to-FIU cooperation in Romania. Although Romanian legislation does not require signing MoUs for the exchange of information with foreign FIUs, the NOPCML-FIU has concluded MoUs with 55 foreign counterparts. The NOPCML-FIU also uses secure channels for information exchange, namely, the ESW and FIU.Net. While the NOPCML-FIU responds to requests received from FIU.Net via the same channel, it sends its own requests primarily out via ESW. This means that the NOPCML-FIU does not benefit from the extended intelligence features provided by the FIU.Net (e.g., Ma3tch solution).

930. Feedback from foreign jurisdictions indicates that the requests by the NOPCML-FIU have been of high quality, provided reasoning for the request as well as the connection to the receiving country.

Table 8.7: Outgoing requests and spontaneous disseminations sent by the NOPCML-FIU

| | 2017 | 2018 | 2019 | 2020 | 2021 | 30.06.2022 |
|---------------------------------------|------|------|------|------|------|------------|
| | ML | ML | ML | ML | ML | ML |
| Sent requests | 277 | 262 | 521 | 450 | 163 | 40 |
| Executed requests | 257 | 237 | 493 | 410 | 131 | 32 |
| Refused request | 0 | 0 | 0 | 0 | 0 | 0 |
| Spontaneous information shared | 26 | 87 | 212 | 146 | 58 | 107 |

931. The existing IT system of the NOPCML-FIU does not separate requests sent in relation to ML and TF and predicate offences that were associated with the ML/TF request. Additionally, current IT-systems do not distinguish between the number of requests sent by the NOPCML-FIU to foreign FIUs: (i) on its own initiative; and (ii) on the initiative of the prosecutors' offices (when prosecution requests financial intelligence from foreign jurisdictions through the NOPCML-FIU).

932. Over the years, the primary counterparts for outgoing requests have been countries with larger populations of Romanian diaspora, namely, Germany, Italy, France, the UK, and neighbouring Moldova. Destinations of outgoing requests seem to be in line with the risks and the context of Romania. The same cannot be said about predicate criminality involved in such requests, as no information was made available in relation to this.

933. Table 8.7 shows significant fluctuations in the numbers of outgoing requests by the NOPCML-FIU. The NOPCML-FIU explained that the significant increase in outgoing requests in 2019 and 2020 was triggered by changes to the AML/CFT Law, which led to an increased number of STRs involving non-executed (and/or suspended) transactions by obliged entities. This shows that the increased proportion of requests was not related to complex ML/TF cases.

934. Although Art. 53(1) in the AMLD4⁸⁸ and AML/CFT Law, Art. 36(4) set the obligation to the NOPCML-FIU to forward the received suspicious transactions reports, which refer to another EU Member State to the FIUs of respective countries, the NOPCML-FIU has not used this in practice.

⁸⁸ The European Parliament and of the Council Directive (EU) 2018/843, dated 30 May 2018 that amends the Directive (EU) 2015/849 that treats the financial system for the purpose of the prevention of money laundering or terrorism financing that amends the Directive 2009/138/EC and 2013/36//EU. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L0849&rid=2>

The NOPCML-FIU spontaneously shares information with its foreign counterparts. Feedback from foreign FIUs indicates that spontaneous disclosures sent by the NOPCML-FIU are generally well received and foreign counterparts have been able to develop leads from those disseminations.

935. The number of outgoing requests and spontaneous disseminations significantly dropped in 2021 as the NOPCML-FIU reviewed its approach on disseminations to judicial authorities and this resulted in reduced international exchange of information (see IO.6). Additionally, the NOPCML-FIU advised that the decline in outgoing requests and spontaneous disseminations was partially due to the Covid-19 pandemic and geopolitical context. The former explanation overlooks activity in 2020, when pandemic restrictions were also in place.

Case study 8.2: where the NOPCML-FIU has successfully sought cooperation from foreign FIUs regarding ML

The NOPCML-FIU received an STR from a PSP about suspicious transfers from a foreign country to Romania in the amount of USD 2 741 on 5 August 2019. The case was followed up by another STR on 2 November 2020 regarding funds transferred from two foreign countries to a large number of seemingly unrelated individuals in Romania in the amount of USD 22 356. The PSP was able to link these transactions through telephone numbers and revealed that the case involved websites which offer escort services.

The NOPCML-FIU was able to identify the main beneficiary of the network of individuals, who used his personal account as well as an account of his company to layer the funds through cash transactions and real estate development. In addition, the NOPCML-FIU requested and received information on the same case from other obliged entities and foreign FIUs. The NOPCML-FIU combined information received from different sources, concluded its analysis of the ML case and forwarded the case to the POHCCJ on 15 June 2021.

The POHCCJ found that some individuals in the case file were associated with a previous investigation regarding blackmail and an OCG, which was concluded and sent to trial on 13 January 2020. Based on the dissemination by the NOPCML-FIU the prosecutors partially reopened the case already sent to trial and the investigation is on-going in relation to blackmail, issuing counterfeit securities, conducting fraudulent transactions and ML by an OCG.

LEAs

936. The Centre for International Police Cooperation under the Police is the central national authority in the field of international police cooperation. This unit is constantly operational and is the central point of contact for Interpol, Europol and Sirene information exchange. The Centre is also the contact point for the Romanian liaison officers sent abroad (e.g., Europol) and foreign liaison officers and internal affairs attachés accredited to Romania.

Table 8.8: Outgoing requests sent by the Police in relation to ML/TF

| | 2017 | | 2018 | | 2019 | | 2020 | | 2021 | | 31.06.2022 | | Total | |
|--------------------------|------|----|------|----|------|----|------|----|------|----|------------|----|-------|----|
| | ML | TF | ML | TF | ML | TF |
| Outgoing requests | 82 | 0 | 82 | 0 | 113 | 0 | 50 | 0 | 94 | 0 | 11 | 0 | 432 | 0 |
| Executed requests | 82 | 0 | 82 | 0 | 113 | 0 | 50 | 0 | 94 | 0 | 11 | 0 | 432 | 0 |

937. Outgoing requests do not indicate any clear trends. Furthermore, the authorities explained that - in many cases - requests are sent in order to receive or validate elementary information, which would later help to formulate more comprehensive requests. As can be seen from the above table, Romanian LEAs request information from foreign counterparts in ML-related cases, but there have been no TF-related police requests sent during the whole assessment period. More granular information on different information channels used and on average response times was not made available. Still, the Police indicated that none of the outgoing requests were refused by foreign counterparties and that the requests were responded to promptly. This indicates a good quality of information requests sent by the Police in ML matters.

938. NAMSA receives requests from Romanian judicial authorities and requests assistance from ARO/CARIN Offices in foreign jurisdictions (requests tracking and identification of criminal proceeds).

Table 8.9: Outgoing requests sent through the ARO / CARIN networks

| | 2017 | 2018 | 2019 | 2020 | 2021 | 31.06.2022 | Total |
|---|------|------|------|------|------|------------|-------|
| Total number of requests (all crimes) | 119 | 121 | 82 | 79 | 154 | 106 | 661 |
| Sent requests in relation to ML offences | 32 | 37 | 30 | 16 | 37 | 4 | 156 |
| Executed | 32 | 37 | 30 | 16 | 37 | 4 | 156 |
| Refused | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Average time for execution (days) | <7 | <7 | <7 | <7 | <7 | <7 | <7 |

939. Requests to identify assets were sent by NAMSA to a wide variety of countries. Requests for additional information from foreign AROs (relating to a number of predicate offences) by the Police, NAD, DIOCT and judges are transmitted through the NAMSA. The overall proportion of outgoing requests related to ML (compared to other criminal offences) is significant and has been around 25%. Still, a sharp decline in ML-related requests was observed in 2022.

940. The above statistics do not provide evidence that use of the ARO network to identify and trace assets in foreign jurisdictions is extensive; thus, the mandate and capacity of the NAMSA is significantly under used. Over the years, the most prevalent predicate offences in ARO-to-ARO information exchange have been fraud, corruption, and tax evasion. This does not correspond entirely to the actual risk context of Romania, as, for example, human and drug trafficking is not in the picture. It is noted that incoming ML-related requests in ARO-to-ARO cooperation have been at least 2 times higher in comparison to outgoing requests. All of the above shows that the mandate and capacity of the NAMSA could be used more extensively for tracing assets in ML investigations.

NCA/Fiscal Administration

941. The Fiscal Administration and NCA in Romania are administrative authorities, and their mandate does not entail information exchange with foreign counterparts in ML/TF matters.

Supervisors

942. The NBR and FSA cooperate with the foreign counterparts through formal requests, participation in supervisory colleges and other supervisory fora, such as bilateral meetings, informal communication, etc. No information on supervisory cooperation has been provided by SRBs or the NGO and the NOPCML participates in single college as a host supervisor.

943. The NBR and FSA collaborate with foreign counterparts through supervisory colleges and direct ad-hoc exchange of information. Up until 2021, the NBR was a host member of the supervisory colleges concerning 13 banks, 4 non-banking FIs, 2 EMIs, and 6 PIs. Overall, FIs supervised by the NBR have a limited presence abroad, e.g., Romanian banks – only in Moldova and Italy where two subsidiaries are established. Under the review period, the FSA participated as a host supervisor in 11 colleges concerning entities operating in insurance sector and 7 colleges in the securities sector.

944. The NBR has signed bilateral MoUs with a large number of foreign competent authorities and there are multilateral cooperation and coordination agreements for supervision of specific financial groups. The data provided by the NBR shows that it proactively seeks international cooperation (see table 8.10). Outgoing requests over the years have been primarily requests to confirm the fit and proper status of owners and controllers of banks who are foreign nationals or have significant nexus with the foreign jurisdiction, and, to a lesser extent, PIs and EMIs. An exception is the first half of 2022, when almost a half of the requests (23) were related to other matters: 9 of which referred to letters of guarantee issued by the supervised entities and remaining 14 were sent to other EU supervisory authorities in relation to sanctions applied by the NBR to FIs belonging to the international groups.

Table 8.10: International supervisory cooperation by the NBR (outgoing requests)

| Outgoing | 2017 | 2018 | 2019 | 2020 | 2021 | 30.06.2022 |
|---|------|------|------|------|------|------------|
| Requests sent | 83 | 85 | 62 | 83 | 55 | 50 |
| Requests executed | 83 | 83 | 61 | 81 | 55 | 46 |
| Requests refused | 0 | 0 | 0 | 0 | 0 | 0 |
| Average response time (days) | < 30 | < 30 | < 30 | < 30 | < 30 | < 30 |
| Spontaneous international dissemination | 3 | 2 | 1 | 0 | 1 | 2 |

945. The FSA has signed bilateral and multilateral MoUs for international cooperation with foreign prudential supervisors and international organisations in different sectors under its mandate. The majority of requests (see table 8.11) relate to fit and proper assessments of owners and controllers who are foreign nationals or have significant nexus with the foreign jurisdiction. There were also requests relating to market abuse and unauthorised activities. Most of the requests made since 2019 relate to the securities sector.

Table 8.11: International supervisory cooperation by the FSA (outgoing requests)

| Outgoing | 2017 | 2018 | 2019 | 2020 | 2021 | 30.06.2022 |
|------------------------------|------|------|------|------|------|------------|
| Requests sent | 8 | 29 | 17 | 16 | 18 | 10 |
| Requests executed | 8 | 29 | 17 | 16 | 18 | 9 |
| Requests refused | 0 | 0 | 0 | 0 | 0 | 0 |
| Average response time (days) | 30 | 30 | 30 | 30 | 30 | 30 |

Case study 8.3: where supervisors have proactively sought and received international cooperation

The NBR received notification regarding an increase of share capital from a non-banking FI (NBFi) in 2021. The source of funds for the capital increase was supposed to be a loan from the NBFi's shareholder registered in a foreign jurisdiction. The NBR sent a request to the Central Bank of that foreign jurisdiction for assistance in verifying the potential shareholder, including its authorisation and licences, and beneficial owners of the legal entity registered in that jurisdiction. Close cooperation and information swiftly received from the foreign counterparty allowed the NBR to adequately assess the situation. Subsequent actions led to withdrawal of two NBFis' registrations.

8.2.4. Providing other forms international cooperation for AML/CFT purposes

NOPCML-FIU

946. The NOPCML-FIU records requests from its foreign counterparts in its database, which does not have case management functionality and must be followed-up manually. Accordingly, the NOPCML-FIU holds limited statistics on foreign requests received and responded to and does not record information on predicate offences.

947. Up until 2021, the NOPCML-FIU did not have prioritisation guidelines. The NOPCML-FIU relied on the requesting party to highlight the urgency of the incoming request.

948. The method for calculating average execution time of foreign requests by the NOPCML-FIU does not always accurately reflect on time spent for providing assistance to foreign counterparts. For example, if an incoming request requires additional effort to gather information from external sources, the NOPCML-FIU sends an interim partial response. This response is recorded in the NOPCML-FIU's information system, and thus the average time of the response is calculated based on the date of the initial response. Significant delays in the execution of incoming requests have been highlighted by multiple foreign FIUs in their feedback, where the longest response times exceeded a year. In 2021, the NOPCML-FIU identified a significant backlog of 143 unsolved requests from foreign FIUs and in response adopted internal guidelines for prioritisation and execution of international requests to overcome the issue. When addressing the backlog, cases marked as urgent by requesting authorities, TF related requests and requests relating to freezing of accounts or funds were given highest priority. Medium level priority was assigned to those requests where foreign authorities had sent reminders. The rest of were addressed starting from the oldest unanswered requests. The backlog was finally resolved in March 2022 and the NOPCML advised that there have been no undue delays since then.

Table 8.12: Incoming requests and spontaneous disseminations received by the NOPCML-FIU

| | 2017 | | 2018 | | 2019 | | 2020 | | 2021 | | 30.06. 2022 | |
|----------------------------------|-------|-------|-------|-------|------|-------|------|------|------|------|-------------|------|
| Incoming requests | ML | TF | ML | TF | ML | TF | ML | TF | ML | TF | ML | TF |
| Foreign request received | 227 | 14 | 242 | 9 | 295 | 8 | 238 | 4 | 235 | 5 | 103 | 3 |
| Foreign requests executed | 132 | 14 | 156 | 9 | 185 | 8 | 202 | 4 | 235 | 5 | 103 | 3 |
| Foreign requests refused | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Average time of execution (days) | 11-30 | 11-30 | 11-30 | 11-30 | >30 | 11-30 | >30 | 0-10 | 0-10 | 0-10 | 0-10 | 0-10 |
| Spontaneous information received | 80 | 0 | 84 | 3 | 100 | 9 | 156 | 1 | 202 | 3 | 101 | 1 |

949. The NOPCML-FIU has not refused any requests. The difference between requests received and executed (see table 8.12) is a number of requests in each specific year, that have not been responded to in the same year.

950. Positively, in 2021, following an assessment of 205 cases of spontaneous information received from foreign counterparts, the NOPCML-FIU initiated operational analysis on 101 cases; 84 were initiated in the first half of 2022. Still, no statistics was made available to the AT on further dissemination of the outcomes of operational analysis based on spontaneous disseminations received.

951. Feedback from other jurisdictions highlighted that the NOPCML-FIU provides a wide variety of information sourced from their own databases as well as multiple external databases the NOPCML-FIU has access to. Furthermore, the NOPCML-FIU advised that they have granted consent to disseminate information provided in their responses to competent LEAs of the requesting country; this assists foreign competent authorities in following financial leads.

Case study 8.4: FIU-to-FIU cooperation: successful execution of an incoming request

The NOPCML-FIU received a request from a foreign FIU that referred to a case involving citizens of that country that were caught when crossing the Romanian border with undeclared goods and cash of a significant value (detained by the NCA in April 2022). An active exchange of information between the countries was initiated. The foreign authorities initiated criminal investigation based on ML suspicion; and the Romanian authorities managed to extend the suspension of assets. The FIU-to-FIU information exchange helped to prevent the release of the suspended funds and, based on the information exchanged, a regional prosecutor’s office in Romania initiated additional investigations on smuggling (in July 2022). This allowed funds in the amount of USD 1 617 077 and EUR 50 940 and other goods to be seized. The criminal investigation is on-going.

LEAs

952. The Centre for International Police Cooperation is the central point of contact for Interpol, Europol and Sirene information exchange in the field of international police cooperation.

Table 8.13: Incoming requests received by the Police in relation to ML/TF

| | 2017 | | 2018 | | 2019 | | 2020 | | 2021 | | 31.06.2022 | |
|-----------------------------------|------|----|------|----|------|----|------|----|------|----|------------|----|
| | ML | TF | ML | TF |
| Incoming requests received | 146 | 1 | 128 | 2 | 88 | 3 | 84 | 2 | 116 | 2 | 3 | 0 |

953. Whilst statistics on the predicate offences related to ML/TF requests are not available, the LEAs advised that the top predicate offences in incoming police requests are related to organised theft, human trafficking, illegal immigration and computer fraud. Although there were incoming requests (between 82 and 214 in different periods) on ML, incoming requests regarding TF were very low - see table 8.14. No statistics was provided on the average time of executing responses, but the authorities advised that all requests are handled with high priority and urgent ones are replied to in hours, if possible. Romanian LEAs have not refused any requests received through Interpol and Europol exchange channels. Although lack of statistics cannot support full effectiveness of LEAs' cooperation, feedback from foreign jurisdictions indicates that responses provided are in general of a good quality.

954. NAMSA receives requests from ARO/CARIN Offices to provide financial intelligence and information about assets under investigation in foreign jurisdictions that are held in Romania.

Table 8.14: Incoming requests received through the ARO / CARIN network

| | 2017 | | 2018 | | 2019 | | 2020 | | 2021 | | 31.03.2022 | |
|---|------|----|------|----|------|----|------|----|------|----|------------|----|
| | ML | TF | ML | TF |
| Incoming requests | | | | | | | | | | | | |
| Total number of requests (all crimes) | 185 | | 186 | | 194 | | 160 | | 205 | | 133 | |
| Received requests in relation to ML/TF | 69 | 1 | 73 | 0 | 65 | 1 | 53 | 0 | 76 | 2 | 40 | 0 |
| Executed | 69 | 1 | 73 | 0 | 65 | 1 | 53 | 0 | 76 | 2 | 40 | 0 |
| Refused | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Average time for execution (days) | <7 | <7 | <7 | | <7 | <7 | <7 | | <7 | <7 | <7 | |

955. Statistics provided by the authorities indicates that none of the incoming requests were refused and the average time for execution was below 7 days. The statistics also show that a significant proportion of incoming requests from foreign AROs are related to ML. Furthermore, during the assessment period, ARO received 41 international confiscation orders, which triggered NAMSA's activities with regard to sharing confiscated assets with the foreign jurisdictions; 13 of those were related to ML.

Table 8.15: List of JITs (Joint Investigation Teams)

| Year | Total number of JITs | Number and topic of JITs related to ML | Number of JITs initiated by Romania |
|------------|----------------------|---|-------------------------------------|
| 2017 | 26 | 2 JITs: 1 UK – trafficking of human beings and ML; and 1 BE – trafficking of human beings and ML | 13 |
| 2018 | 18 | 3 JITs: 1 UA – smuggling of cigarettes and ML; 1 DE – cyber related crime and ML; and 1 BE – corruption and ML | 13 |
| 2019 | 29 | 6 JITs: 1 UK – cyber related crime and ML; 1 IT – cyber related crime and ML; 1 UK – trafficking of human beings and ML; 1 DE – trafficking of human beings and ML; 1 DE, IT, FR and BE – OCG and ML; and 1 RS – drugs trafficking and ML | 22 |
| 2020 | 16 | 1 JIT: 1 EE and LT – cyber related crime and ML | 11 |
| 2021 | 18 | 1 JIT: 1 UK – trafficking of human beings and ML | 9 |
| 30.06.2022 | 1 | None related to ML | |

956. The number of JITs that Romanian prosecutors and judicial authorities participate in is overall high; as well as the number of JITs that have been initiated by Romania. This shows that the authorities are actively pursuing, as well as providing, international assistance. A large majority of JITs involve specialised prosecutors’ offices and especially the DIOCT.

957. In most cases that involved DIOCT, the predicate offences were trafficking in human beings and cyber-related crime (in this context cyber assisted fraud). The participating countries have been both from the EU and from non-EU countries. In most of the JITs, a ML offence was included in the foreign investigation, but investigations conducted in Romania were concerned only predicate offences.

Case study 8.5: Usage of JIT in ML investigation, where predicate offences were committed abroad

Between 2012 and 2018, suspects set up an OCG involved in trafficking in human beings and ML. The members of the OCG recruited young girls from Romania, who were transported and forced into prostitution in Germany, Austria, Italy and Spain. The victims were recruited under false job promises and most of them through the “*Lover Boy*” method. The defendants continuously used physical and moral intimidation against the victims by threatening them or using extortion and violence.

A JIT was established with the German authorities. The financial analysis carried out during the investigation revealed that, in addition to trafficking of human beings, the suspects opened bank accounts and invested criminal proceeds to real estate, luxury cars and jewels in order to conceal the illicit origin.

DIOCT seized cash, jewels, 3 luxury cars and 10 real estate properties and prosecuted 12 suspects. In 2020, 12 suspects were convicted and sentenced to imprisonment of between 5 years and 12 years and 11 months. Furthermore, 6 individuals out of 12 were additionally convicted for ML and sentenced to between 3 and 6 years in prison. Moreover, the court ordered the confiscation of the seized assets.

Supervisors

958. The NBR and FSA cooperate with the foreign counterparts through formal requests, participation in supervisory colleges and other supervisory fora, such as bilateral meetings, informal communication, etc. No information on supervisory cooperation has been provided by the NGO and NOPCML, except for the supervisory college to which NOPCML is a party.

959. The NBR has not refused to execute any foreign request during the assessment period and has executed all incoming foreign requests on a timely basis (see table below). The majority of incoming requests relate to: (i) information on *fitness and propriety* of owners and controllers of banks, PIs and EMIs; and (ii) assistance and information on supervisory activities concerning international financial groups.

Table 8.16: International supervisory cooperation by the NBR (incoming requests)

| Incoming | 2017 | 2018 | 2019 | 2020 | 2021 | 30.06.2022 |
|----------------------------------|------|------|------|------|------|------------|
| Requests received | 11 | 10 | 22 | 18 | 14 | 14 |
| Requests executed | 11 | 10 | 22 | 18 | 14 | 14 |
| Requests refused | 0 | 0 | 0 | 0 | 0 | 0 |
| Average response time (days) | < 30 | < 30 | < 30 | < 30 | < 30 | < 30 |
| Spontaneous incoming information | 1 | 1 | 0 | 0 | 0 | 0 |

960. There have been no instances of refusal of requests received by the FSA and the average time to respond is 30 days. The largest proportion of requests relate to fit and proper checks; other requests include market abuse and unauthorised activity.

Table 8.17: International supervisory cooperation by the FSA (incoming requests)

| Incoming | 2017 | 2018 | 2019 | 2020 | 2021 | 30.06.2022 |
|------------------------------|------|------|------|------|------|------------|
| Requests received | 5 | 4 | 13 | 15 | 9 | 8 |
| Requests executed | 5 | 4 | 13 | 15 | 9 | 8 |
| Requests refused | 0 | 0 | 0 | 0 | 0 | 0 |
| Average response time (days) | 30 | 30 | 30 | 30 | 30 | 30 |

8.2.5. International exchange of basic and beneficial ownership information of legal persons and arrangements

961. There are no legal impediments to providing and requesting basic and BO information. The BO registers for legal persons and arrangements were established in Romania in 2019 and became directly accessible to most authorities in 2021. Basic information was available in the registers throughout the review period. Accuracy of BO information contained in the registers improved following the recent prohibition of bearer shares. Still, some authorities expressed doubts in relation to the accuracy or completeness of BO information contained in the registers and greater use is placed on CDD information collected by banks to identify beneficial owners (see IO.5). Whilst most of the authorities have direct access to the BO registers (where available), the POHCCJ, which oversees 235 regional prosecutors' offices with competence in international cooperation in criminal matters, has directly accessed BO data in the registry only on handful of occasions and relies on written requests and on the NOPCML-FIU for collecting the data from the register. This might affect timely execution of MLA requests.

962. The NTRO has estimated that around 80% of Romanian legal persons have bank accounts opened in Romania (see IO.5) where the application of CDD measures, including for BO, is overseen by the NBR. Supervisory findings presented in this area are mixed and they do not

include aggregated statistics. Accordingly, the authorities have not sufficiently demonstrated that banks hold accurate and current BO information. In addition, the NRA has identified the use of shell companies, use of “strawmen” in company formation, and high risk presented by company service providers. All of the above discussed limitations might hinder the accuracy of BO information provided to foreign counterparts.

963. Prosecutors’ offices and LEAs do not collect data and statistics on the international exchange of basic and BO information of legal persons and arrangements. The authorities indicated that retrieval of this type of data would be practically impossible as the collection and processing of data would be exclusively manual and would entail searches in physical paper-based archives of criminal case files in the 235 regional offices.

964. In order to collect BO information, the NOPCML-FIU uses: (i) registers held by the NTRO, MoJ and Fiscal Administration; and (ii) internal database of STRs. If the need arises, it requests additional information from the credit institutions. However, no data on the number of requests sent and received for basic and BO information is collected by the NOPCML-FIU and therefore this information could not be made available.

965. The NAMSA holds statistics on basic company information exchanged with the foreign counterparts in relation to ML/TF cases and the authority informs that there was no distinction made between basic and BO information throughout the review period. Outgoing requests for basic information have been significantly lower than incoming requests. There are no statistics available on requests for BO data as NAMSA advised that they started gathering data on BO in 2022.

Table 8.18: Incoming and outgoing requests of basic and BO information in ARO

| | 2017 | | 2018 | | 2019 | | 2020 | | 2021 | | 30.06.2022 | |
|---------------------------|-------|-----|-------|-----|-------|-----|-------|-----|-------|-----|------------|----|
| | Basic | BO | Basic | BO |
| Requests received | 9 | n/a | 23 | n/a | 20 | n/a | 5 | n/a | 14 | n/a | 14 | 8 |
| Requests executed | 9 | n/a | 23 | n/a | 20 | n/a | 5 | n/a | 14 | n/a | 14 | 8 |
| Requests refused | 0 | n/a | 0 | 0 |
| Requests sent | 9 | n/a | 1 | n/a | 8 | n/a | 9 | n/a | 5 | n/a | 0 | 0 |
| Responses received | 9 | n/a | 1 | n/a | 8 | n/a | 9 | n/a | 5 | n/a | 0 | 0 |
| Requests refused | 0 | n/a | 0 | 0 |

966. Although the NBR and the FSA frequently exchange information with foreign counterparts on fit and proper checks, the NBR was not able to provide statistics on the exchange of BO and basic information. The FSA confirmed that there has been no cooperation regarding BO information of customers of supervised entities.

967. The authorities do not seek feedback from foreign counterparties on the quality of basic and BO information provided.

Overall conclusion on IO.2

968. Romania has a sound legal framework for international cooperation. The feedback provided by foreign counterparts indicates a generally good quality of responses by the Romanian authorities. However, the absence of a central case management system and prioritisation guidelines for incoming requests hinder effectiveness in seeking and providing international cooperation. A significant lack of qualitative data and statistics seriously limits the country's ability to demonstrate effectiveness comprehensively. For example, statistics provided and absence of granular information relating to predicate offences associated with MLA requests and FIU-to-FIU information exchange, do not allow a comprehensive conclusion on the extent that international cooperation is aligned to the actual risk context of the country.

969. Low prioritisation of TF in Romania in seeking international cooperation is of some concern, especially in light of the fact that the TF could be linked to criminal activity and that Romania lies on the Western-Balkan route.

970. The extent to which the authorities cooperate on the exchange of basic and BO information cannot be determined due to the absence of data. Financial supervisors have proactively sought and provided international cooperation to foreign counterparts.

971. **Romania is rated as having a substantial level of effectiveness for IO.2.**

TECHNICAL COMPLIANCE ANNEX

This annex provides detailed analysis of the level of compliance with the Financial Action Task Force (FATF) 40 Recommendations in numerical order. It does not include descriptive text on the country situation or risks and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the mutual evaluation report.

Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous mutual evaluation in April 2014. This report is available from [Romania \(coe.int\)](https://www.coe.int).

Requirements under R.1 were added to the FATF Recommendations when they were last revised in 2012 and, therefore, were not assessed during Romania's 4th round MER.

Recommendation 1 – Assessing risks and applying a risk-based approach

Criterion 1.1 – Romania has conducted an NRA; the NRA report was approved by the IC on September 15, 2022⁸⁹. The NRA process was coordinated by the NOPCML and the Steering Committee of the IC, which is comprised of the representatives of the NOPCML, NBR, FSA, POHJCC, MoIA, RIS, and MoJ. The assessment was based on surveys and interviews involving both public sector (competent authorities) and private sector (obliged entities); the analysis is based on quantitative and qualitative data. The report analyses domestic and cross-border ML threats, sectorial risks and ML vulnerabilities at national and sectorial levels. TF risk is also considered. The level of threats/risks identified, combined with a vulnerabilities assessment, determine the final risk ratings.

As explained under IO.1, the NRA report presents a broad overview of the risks faced by Romania. However, lack of comprehensive data and statistics militates against the comprehensiveness and depth of risk understanding in some areas. Although Romania's exposure to cross-border threats is not significant, the country nevertheless would benefit from deepening the risk understanding in this area. The same applies to TF risks and risks associated with legal persons, legal arrangements, NPOs, etc. See IO.1 for further analysis of country risk understanding.

Criterion 1.2 – The NOPCML coordinates assessment of the ML/TF risks at national level and mitigation efforts in cooperation with other competent authorities (AML/CFT Law, Art. 1(3)). Other competent authorities⁹⁰ are required to conduct sectorial risk assessments (AML/CFT Law, Art. 1(4)). Prior to conducting the NRA, a Steering Committee tasked with implementing the national mechanism for risk assessment was set up, consisting of designated representatives of the NOPCML, NBR, FSA, POHJCC, MoIA, RIS, and MoJ. It has met twice: July 2020 and July 2021, the NOPCML being the project team leader and national contact point for this Committee. Although Romania had a technical mechanism in place prior to the formation of the Steering Committee to coordinate actions relating to risk assessment, not all relevant competent authorities were members of that mechanism or the Committee (e.g., for example, the Fiscal Administration, NGO, Registries, and NCA are not included).

⁸⁹ The concise version of the NRA report was published on the NOPCML website in November 2022.

⁹⁰ These include competent authorities with regulatory, supervisory and control responsibilities, NCA, NBR, FSA, and NGO.

On September 2, 2022, two weeks before official adoption of the NRA, the IC was set up by Prime Minister's Decision no. 454. According to the Decision, the IC is responsible for the approval of the NRA report, the National Action Plan and the revisions of these documents. The IC is composed of the representatives of the NOPCML, MoJ, POHCCJ, MoIA, RIS, FSA and NBR. President of the NOPCML holds a role of the President of the IC.

The IC can meet for a working session at the request of the President or any other IC member. The IC met twice in September 2022 to discuss and officially adopt the NRA report.

Criterion 1.3 – The authorities are required to update the national and sectorial risk assessments at least once every four years taking into account the evolution of the risks and the effectiveness of the mitigating measures; the outcomes shall inform prioritisation and allocation of resources in the AML/CFT field (AML/CFT Law, Art. 1(6)).

Criterion 1.4 – The NOPCML is required to publish a concise version of the NRA on its website and share relevant elements of the NRA (extracts) with the supervisory authorities (AML/CFT Law, Art. 1(6)). Consequently, the supervisory authorities are required to make this information available to covered FIs, DNFBPs and VASPs (AML/CFT Law, Art. 1(7)), along with the sectorial risk assessments. The NOPCML informs other public authorities about developments, threats, vulnerabilities, and ML/TF risks (AML/CFT Law, Art. 39(3)(h)). However, the requirement to provide information on the NRA results to other competent authorities (except for supervisory authorities) and SRBs is not explicit. Although legal provisions largely cover technical requirements of the c.1.4, the mechanism for information sharing concerning NRA results has not been used before the end of the on-site visit⁹¹.

Criterion 1.5 – At the end of the on-site visit authorities were in the process of finalising the national action plan⁹² aimed at mitigating the risks, thus the extent to which risk understanding informs the allocation of targeted measures and necessary resources cannot be fully established. However, under the review period, the authorities were acting towards allocation of targeted measures (evident from the work on various strategies) and getting more resources required for mitigation, see IO.1 for more information.

Criterion 1.6 – Romania does not apply any statutory exemptions from the FATF recommendations applicable to covered FIs, DNFBPs or VASPs.

Criterion 1.7 – In addition to standard CDD measures, covered FIs, DNFBPs and VASPs are required to take enhanced measures in the following situations: (i) business relationships or transactions with high risk third countries; (ii) correspondent relationship; (iii) business relationships or transactions with PEPs; (iv) other cases as stipulated in sectorial regulations or instructions issued by the competent authorities; (v) as well as other high ML/TF risk scenarios (Art. 17(1), AML/CFT Law).

The high risk situations and scenarios that trigger EDD measures do not contradict the findings of the NRA report.

⁹¹ Authorities have informed that awareness raising events on NRA results have taken place in November 2022 and mostly covered FIs and DNFBPs. Other than publishing a concise version of the NRA report, it is not clear whether the NRA results were directly shared with SRBs and all relevant competent authorities.

⁹² National action plan is drafted with a support of external experts within the framework of SRSP 2020/137.01 Project. National action plan was approved in February 2023.

The AML/CFT Law provides a list of specific actions that have to be carried out when conducting EDD measures in relation to PEPs, correspondent banking, and high risk third countries (Art. 17(7), 17(9) and 171(1) of the AML/CFT Law).

Covered FIs, DNFBPs and VASPs are required to identify and assess ML/FT risks, taking into account risk factors which relate to their customers, countries and geographical areas, products, services, transactions and delivery channels (Art. 25(1), AML/CFT Law). These factors are further specified at Art. 17(14) of the AML/CFT Law as potentially high-risk situations that shall be considered when conducting risk assessments, e.g. cash-based activities, products or transactions relating to anonymity, private banking, payments from unknown third parties, use of nominees and bearer shares, new technologies (incl. products, services and distribution mechanisms), transactions relating to oil, weapons, precious metals, tobacco products, countries identified as high risk by credible sources (due to high level of corruption, criminal activities, countries subject to international sanctions, etc.) and countries in which terrorist cells operate, etc.

Enhanced measures are further detailed in various other regulations, such as Implementing procedures, NBR regulation which also makes a reference to the recent EBA risk factor guidelines of 2022. FSA Regulations also list a number of situations which indicate higher risk, including: (i) sectors linked to corruption; (ii) customers that are PIs or exchange offices; (iii) sectors involving significant cash amounts; and (iv) customers that use complex structures.

Criterion 1.8 – Covered FIs, DNFBPs and VASPs are allowed to apply simplified due diligence measures to low-risk clients (Art. 16(1), AML/CFT Law) after assessing clients' related risks and lower risk factors stipulated at Art. 16(2) of the AML/CFT Law. The lower risk factors that have to be taken into account when deciding whether simplified CDD is appropriate include: (i) public companies listed on a stock exchange and subject to disclosure requirements, including for BO; (ii) customers who reside in low-risk geographical areas; (iii) life insurance policies with premiums below specified thresholds; (iv) pension schemes that meet specified conditions; and (v) products and services aimed at increasing financial inclusion, etc. Regulations published by the NBR and FSA provide that simplified measures may consist of adjusting: (i) the volume of information collected; (ii) the number of sources of information used; and (iii) the frequency and intensity of transaction monitoring and information updates. Implementing Procedures issued by the NOPCML⁹³ (Art. 16(2)) detail the measures that obliged entities may undertake when applying SDD, e.g., (ii) reducing the scope of KYC, (ii) reducing frequency of CDD updates and degree of monitoring, etc. Although this guidance is useful, authorities should ensure that some provisions, such as “obtaining less information on BO” (Art.16(2)(b) of the NOPCML implementing Procedures), is interpreted by the obliged entities in a uniform manner so not to hinder availability and transparency of BO data held by the private sector. The low-risk scenarios that trigger simplified measures are consistent with the general risk environment in Romania.

Criterion 1.9 – The AML/CFT Law lists the supervisory authorities that are responsible for monitoring compliance by FIs, DNFBPs and VASPs with the AML/CFT Law and any implementing directives (Art. 26(1), AML/CFT Law). This includes requirements set out under Rec. 1. Shortcomings discussed under R. 26 (c.26.5) and R. 28 (c.28.4(a)-28.5) apply here.

Criterion 1.10 – Covered FIs, DNFBPs and VASPs are required to identify and assess ML/FT risks, taking into account risk factors concerning their customers, countries and geographical areas, products, services, transactions and delivery channels (Art. 25(1), AML/CFT Law). More detailed

⁹³ NOPCML procedures are not applicable to FIs supervised by the NBR and the FSA.

risk factors and potentially high-risk circumstances are set out in Art. 11(6), 17(14) of the AML/CFT Law. The risk assessment should be documented, updated, and made available to the supervisory or SRBs upon request (Art. 25(2), AML/CFT Law). The assessments shall be used to set up risk management policies and procedures and determine the scope of CDD measures (Art.25(3), AML/CFT Law).

Criterion 1.11 – Covered FIs, DNFBPs and VASPs are required to have policies, procedures, and internal control mechanisms in place to manage and mitigate ML/FT risks (Art. 24(1), AML/CFT Law). These measures should be approved and monitored by the higher management (Art. 24(3), AML/CFT Law). However, there is no explicit legal requirement to enhance these controls if necessary.

Covered FIs, DNFBPs and VASPs are required to apply enhanced measures in the circumstances that present increased risk of ML/TF (Art. 17(1), AML/CFT Law). Enhanced measures that are required in higher risk circumstances are listed under c.1.7.

Criterion 1.12 – Covered FIs, DNFBPs and VASPs are allowed to apply simplified due diligence measures to low-risk clients (Art. 16(1), AML/CFT Law) after assessing clients' related risks and lower risk factors stipulated at Art. 16(2) of the AML/CFT Law. They are required to carry out monitoring with a view to detecting suspicious and unusual transactions (Art. 16(4), AML/CFT Law). However, there is no explicit prohibition to apply simplified due diligence measures whenever there is a suspicion of ML/TF. This shortcoming is largely mitigated by the general requirement to apply CDD measures when there is a suspicion of ML and TF.

Weighting and Conclusion

The following shortcomings exist: (i) Although Romania has a technical mechanism in place to coordinate the actions to assess the risks, not all relevant competent authorities are members of the IC and the Steering Committee that coordinate NRA (c.1.2); (ii) the requirement to provide information on the results of the risk assessment to public authorities (except for supervisory authorities) and SRBs is not explicit (c.1.4); (iii) at the time of the onsite, an action plan to mitigate the national risks was work in progress (c.1.5); (iv) Although the minimum CDD requirements that the obliged entities have to fulfil when conducting simplified CDD is stipulated in regulations, authorities should ensure that some provisions, such as “obtaining less information on BO”, interpreted by the obliged entities in a uniform manner (c.1.8); (v) there is no explicit legal requirement to enhance the controls aimed at managing ML/TF risks if necessary (c.1.11); (vi) there is no explicit prohibition to apply simplified due diligence measures whenever there is a suspicion of ML/TF (c.1.12). **R.1 is rated LC.**

Recommendation 2 – National Cooperation and Coordination

In the 4th round MER, Romania was rated LC with former R.31 on a point on effectiveness.

Criterion 2.1 – Although Romania does not have an overarching national AML/CFT policy, the following strategies have been drawn up to date: (i) Operational Strategy of the NOPCML 2021-2026; (ii) National Cyber Security Strategy 2022-2027 approved by Government Decision on December 30, 2021; (iii) National Drug Strategy 2022-2026, approved by Government Decision on April 5, 2022; (iv) National Strategy against Organised Crime 2021-2024 approved by Government Decision on September 20, 2021; (v) National Strategy against Human Trafficking 2018-2022 approved by Government Decision on November 9, 2018; (vi) National Defence Strategy 2020-2024 approved by the joint meeting of the Senate and Chamber of Deputies on June

30, 2020; (vii) National Strategy on Immigration 2021-2024 approved by Government Decision on September 2, 2021; (viii) National Anti-Corruption Strategy 2021-2025 approved by Government Decision on 22 December, 2021⁹⁴; (ix) National Asset Recovery Strategy 2021-2025 approved by Government Decision on September 20, 2021; (x) National Strategy for Sustainable Development of Romania 2030⁹⁵ approved by Government Decision on November 21, 2018; (xi) National Strategy for Preventing and Countering the Proliferation of Weapons of Mass Destruction and Their Delivery Systems approved by the Supreme National Defence Council by Decision No. 0103/2020; (xii) National Strategy for Preventing and Countering Terrorism approved by the Supreme National Defence Council by Decision 36/2002, classified document; (xiii) General Protocol on the Organisation and Functioning of the National System for the Prevention and Countering of Terrorism (the document is classified therefore was not provided to the AT), approved by the Supreme National Defence Council by Decision No 0067/2008.

These strategies reflect the picture of risks in Romania to a large extent, e.g., corruption, cyber-crimes, human trafficking, drug trafficking, but the absence of an overarching national AML/CFT strategy militates against a uniform approach across all areas of AML/CFT; see IO.1 for more information. Linked with this, the articulation of comprehensive information on the actions taken by the various competent authorities to meet strategic objectives, and measurable results of mitigation achieved is work in progress.

Following the adoption of the NRA report, the authorities completed an action plan to mitigate the risks – this document was “work in progress” at the time of the onsite visit by the AT and was approved after the visit.

Criterion 2.2 – The authority designated to coordinate the assessment of national risks and mitigation efforts is the NOPCML (AML/CFT Law, Art. 1(2-3)). Coordination of the national response to assessed risks is carried out by the NOPCML in cooperation with the following authorities: (i) judicial bodies; (ii) authorities and public institutions with regulatory, information and control responsibilities in the AML/CFT field, including financial/fiscal control authorities, or authorities with fiscal control attributions, and customs authorities; (iii) state bodies specialised in intelligence activity; (iv) autonomous administrative authorities and institutions with sectorial supervisory and regulatory roles with regard to obliged entities, such as the NBR, the FSA, and the NGO (AML/CFT Law, Art. 1(1) and 1(3)). The above-mentioned authorities (excluding state bodies specialised in intelligence activity) are required to provide the NOPCML with information on the fulfilment of their responsibilities, in accordance with the action plan established by NRA, the way in which they cooperate with other authorities and, to the extent that this information is available, the financial resources and human resources allocated for AML/CFT.

The IC was officially established on September 2, 2022, following a Decision of the Prime Minister (published in the Official Gazette of Romania). This body is granted powers to approve the NRA, as well as mitigation policies and their updates. The IC is composed of representatives of the NOPCML, POHCCJ, MoIA, RIS, the FSA and the NBR. These authorities shall participate in the

⁹⁴ Work in anti-corruption field continued throughout review period. Anticorruption Strategy 2021-2025 is the second strategy on anticorruption – replacing the Anti-corruption Strategy 2016-2020.

⁹⁵ Authorities inform that target of this strategy is to significantly reduce illicit financial and arm flows, strengthen the recovery and return of stolen assets and combat all forms of organised crime; however, the document itself has not been made available to the AT due to its sensitive nature.

decision-making process on matters relating to their competences, as outlined in the decision of the Prime Minister. The president of the NOPCML is the chairman of the IC.

The authorities view the IC as a platform that enables coordination regarding national AML/CFT policies and monitoring of implementation. However, not all authorities listed in Art. 1(1) of the AML/CFT Law (that should be involved in national risk mitigation) are members of the IC⁹⁶, thus the coordination mechanism for national AML/CFT policies is largely but not wholly complete.

Criterion 2.3 – Although there is a coordination mechanism regarding development and implementation of AML/CFT policies, as described at c.2.2, the state bodies specialised in intelligence activity are not required to exchange the information on mitigation efforts and cooperate with other authorities. Moreover, the IC, which serves as a platform for coordination regarding national AML/CFT policies and monitoring of implementation, does not encompass all the authorities that are legally required to contribute to the process both at the policy making and operational levels.

Criterion 2.4 – National cooperation and coordination mechanisms extend to combating PF through: (i) the CIISI, which was established through Government Emergency Ordinance (GEO no. 202/2008, Art. 12(1¹) and Art. 13 (1-8)), and is tasked with implementation of targeted international sanctions (i.e. the CIISI covers all sanctions frameworks) in Romania and includes representatives from 12 authorities (chaired by the MFA Office for the Implementation of International Sanctions); and (ii) the Interinstitutional Consultative Group (GCI), which was established in 2016 through an Executive Order of the Supreme Council of National Defence (CSAT) and is responsible for the implementation of PF strategy. The latter is chaired by the RIS and includes representatives from 21 authorities.

Criterion 2.5 – Covered FIs, DNFBBs and VASPs are prohibited from processing data for purposes other than AML/CFT (AML/CFT Law, Art. 22(1)). Processing of personal data in accordance with the provisions of the AML/CFT Law is considered as a matter of public interest for the purposes of Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation – GDPR) (AML/CFT Law, Art. 22(4)).

Data protection authorities are not included in the IC or the other coordination/cooperation mechanisms on AML/CFT but have confirmed that, as the GDPR applies in Romania, data protection principles are embodied in the drafting of legislation.

Weighting and Conclusion

The following shortcomings exist: (i) there is no overarching national AML/CFT policy which is informed by risks and periodically reviewed; at the time of the onsite visit, an action plan to mitigate the risks identified in the NRA report was “work in progress” (c.2.1); (ii) although there is a coordination mechanism regarding national AML/CFT policies that also enables information exchange, the intelligence service is not required to exchange information on mitigation efforts and cooperate with other authorities; moreover, the IC, which serves as a platform for coordination, does not encompass all the authorities that are legally required to contribute to the process both at the policy making and operational levels (c.2.2-2.3); and (iii) there is no formal cooperation and coordination between relevant competent authorities to ensure the

⁹⁶ E.g., the Fiscal Administration, NCA, Border Police, and NGO.

compatibility of the AML/CFT requirements with data protection requirements (c.2.5). **R.2 is rated PC.**

Recommendation 3 - Money laundering offence

The current R.3 was previously assessed under the old R.1 and R.2 for both of which it was rated LC mainly due to effectiveness issues identified. The only technical issue that was identified under analysis of old R.2 (2014 MER) related to shortcomings that were identified in relation to TF offence as predicate offence to ML (since Romania uses all crime approach). Since the last evaluation, the new AML/CFT Law (Law no. 129/2019) was adopted on July 11th, 2019 (entered into force on 21.07.2019) which replaced the previous AML/CFT Law (Law 656/2002). The ML offence is now set out in Art. 49 of the new AML/CFT Law. For TF offence please refer to R.5.

Criterion 3.1 – Art. 49(1) of the AML/CFT Law defines ML in a way which includes the material elements of the Vienna and Palermo Conventions (Article 3(1)(b)&(c) Vienna Convention and Article 6(1) Palermo Convention) under the conditions set out by the Romanian constitutional principles. The ML offence covers the following activities: (i) conversion or transfer of proceeds of crime; (ii) concealing or disguising the true nature, source or location of the proceeds, or the method involving the disposition, movement or ownership of the proceeds or rights with respect to proceeds; and (iii) acquiring, possessing, or using proceeds (see also c.3.7 below).

Criterion 3.2 – Romania follows an all-crimes approach and all categories of predicate offences for ML required under the FATF Methodology are covered under the CC. There are no references to particular offences or thresholds applied, instead Romanian law makes general reference to “*property derived from criminal activity*” (AML/CFT Law, Art.49 (1). Thus, any crime can be a predicate offence for ML.

Criterion 3.3 – This criterion is not applicable. Romania does not apply a threshold approach or a combined approach that includes a threshold approach.

Criterion 3.4 – The ML offence extends to any type of property (including VAs⁹⁷), regardless of its value, that directly or indirectly represents the proceeds of crime.

Criterion 3.5 – In proving that the property concerned is the proceeds of crime it is not necessary that a person be indicted for or convicted of the predicate offence. This has been confirmed by the High Court of Cassation and Justice (Decision no. 16/2016): “*The ML offence is an autonomous offence, without being conditioned by a conviction for the predicate offence*”.

Criterion 3.6 – Romanian law criminalises acts of ML irrespective of whether the predicate crime from which the property originated was committed in Romania or another country (AML/CFT Law, Art. 49 (5)).

Criterion 3.7 – The ML offence applies to persons who commit the predicate offence with following exception as set out in the AML/CFT Law, Art. 49 that is based on Constitutional Court Decision applying fundamental principles of domestic law. Following the Constitutional Court’s Decision (Decision no. 418/2018), AML/CFT Art.49(1) point c) excludes predicate offenders (whether as author, accomplice or abettor) from being prosecuted as self-launderers; the condition being that the acquisition, possession or use of property has to be “*by a person other than the active subject of the offence from which the property derives [i.e., originates]*”.

⁹⁷ See also case study on seizure of VAs under IO.8.

Criterion 3.8 – Art. 49 (4) of the AML/CFT Law expressly provides that the intent and knowledge required to prove the ML offence may be inferred from objective factual circumstances.

Criterion 3.9 – The criminal sanctions available for the basic and aggravated forms of the ML are in line with other serious crimes in Romanian Law and seem to be proportionate and dissuasive. The natural person convicted for ML may be punished with imprisonment between 3 and 10 years (AML/CFT Law Article 49 (1)).

It is an aggravating feature when the ML offence is committed by an obliged entity, during the exercise of its professional duties (AML/CFT Law Article 49 (2¹), where this occurs the maximum punishment may be imposed and if the court decides that the maximum term is not enough, the court may apply a 2-year additional term to the main penalty. If there are several offences, the penalty for each offence is established separately and the heaviest penalty is applied according to the rules set out in the CC Art 39. It is therefore explicit that where there are several offences, an increase in the penalty or fine is mandatory rather than optional.

Criterion 3.10 – Proportionate criminal sanctions apply to legal persons (CC, Art. 135(1) – (3)). The penalties applicable to legal entities include main penalties and complementary penalties (CC, Art.136(1)). The main penalty is a fine (CC, Art.136(2) consisting of the amount of money that the legal person is sentenced to pay to the state (CC, Art 137(1)). The amount of the fine is established through the day-fine system. The amount corresponding to a day-fine, between RON 100 and 5 000 (EUR 20 and 1 021), is multiplied by the number of days-fine, which is between 30 days and 600 days (CC, Art 137(2)). Furthermore, the law provides maximum limit for ML offence day-fine which is 300 days (CC, Art. 137(4)c)), which is maximum of around EUR 306 300. Although the maximum fine for legal persons might not be dissuasive enough in all cases (e.g., for bigger legal entities) it must be noted that there are also range of other complimentary punishments available that can be considered even more dissuasive than imposing the fine, including: a) dissolution of the legal entity; b) suspension of the activity or of one of the activities of the legal person for a period from 3 months to 3 years; c) closure of some work points of the legal entity for a period from 3 months to 3 years; d) prohibition from participating in public procurement procedures for a period of one to 3 years; and e) placing under judicial supervision (CC, Art. 139 – 145). In addition, complimentary punishment is displaying or publishing the sentencing decision (CC, Art.136(3)f)).

Criterion 3.11 – In Romanian law a person can be liable as the author, co-author, instigator or accomplice to the ML offence. Appropriate ancillary offences to the ML offence exist, including: (i) participation in the offence as author or co-author (CC, Art 46); (ii) instigator or counsellor of the commission of the offence (CC, Art.47); (iii) a facilitator or aider and abettor (CC, Art (48). Attempts are punished by AML/CFT Law, Art. 49(2). With respect to conspiracy, the law criminalises initiating or creating, joining, or supporting, in any way, an organised crime group (CC, Art. 367).

Weighting and Conclusion

R.3 is rated C.

Recommendation 4 - Confiscation and provisional measures

The current R.4 was previously assessed under the old R.3 in the 2014 MER and for which Romania was rated LC. The technical shortcomings identified were following: (i) there was no third party confiscation apart from instrumentalities used and belonging to a third person who had knowledge about the purpose of their use; and (ii) there was no authority to take steps to

prevent or void actions, whether contractual or otherwise, where persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation. Since the previous evaluation, Romania has amended CC and CPC.⁹⁸ as well as AML/CFT Law, which AT have analysed for assessing R.4.

Criterion 4.1 – The general confiscation measures are set out in the CC. These provide for special confiscation (that are in other words general confiscation measures) and extended confiscation measures (CC, Art 112 and 112¹). Extended confiscation measures complement those for special confiscation. The “special confiscation” (in other words general criminal confiscation), provides the possibility to confiscate 6 categories of certain assets (including VAs⁹⁹, including instrumentalities, while the “extended confiscation” allows, in addition to “special confiscation”, to confiscate assets acquired by the defendant 5 years before and after committing the offence, implementing the Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 *on the freezing and confiscation of instrumentalities and proceeds of crime in the EU*. In “extended confiscation” cases, the court must be satisfied that the assets come from crime. The court's finding may also be based on the disparity between a person's property and what could be accounted for by the claimed legal means (PC Art. 112¹) crime. Special and extended confiscation measures apply to all offences set out in the CC subject to modifications and completions as specified in AML/CFT Law Art 51. In other words, relevant AML/CFT Law provisions complement the CC provisions that are considered to be *lex generalis*. The law enables confiscation of the following types of property, whether held by criminal defendants or by third parties as follows:

(a) *Property laundered*

AML/CFT Law enables the confiscation of property in the case of ML and TF offences by applying the provisions on confiscation of property set out in CC with subsequent modifications and completions (AML/CFT Law, Art. 51(1)). CC provisions allow confiscation of the goods produced by committing the deed provided for by the criminal law (CC, Art. 112(1)(a)) and assets acquired by committing the act provided for by the criminal law, if they are not returned to the injured person and to the extent that they do not serve to compensate him/her (CC, Art. 112(1)(c). AML/CFT Law, Art. 51 read in conjunction with Art.112(1)(a) and (c) of the CC allows confiscating property laundered from criminal defendants (Romania provided to AT also relevant court decisions to demonstrate the interpretation of the law). Consequently, Art. 51(1) of the AML/CFT Law together with Art. 112(1)(a) and (c) of the CC allows confiscation of property laundered from criminal defendants.

In addition, CC Art. 112¹ (1) provides: Other assets than those provided for in Art. 112 are also subject to confiscation, when a person is ordered to be convicted for an act capable of procuring a material use and for which the punishment provided by law is imprisonment of 4 years or more,

⁹⁸ It is noted in 2014MER (section 2.3.2) that its analysis was based on previous CC provisions while between the onsite and adoption of 2014 MER report new provisions of CC and CPC came into force that AT of 2014MER was not in position to analyse. As a result, it was concluded in 2014 MER: “*Considering that the legal gaps identified in the third evaluation round were still in place at the time of the fourth-round evaluation visit, the evaluation team reiterates the previous recommendations. However, these are not detailed below and for the purpose of the action plan, given that in the meantime a new CC and CPC Code are in force, and it appears to the evaluation team that it would be impractical to recommend taking legislative action for modifying legal provisions which are no longer in force*”.

⁹⁹ As for the confiscation of VAs, there is no rule in Romanian law to exclude the applicability of the confiscation measures to VAs.

the court forms the conviction that the respective assets come from criminal activities. The court's conviction may also be based on the disproportion between the legal income and the person's property. Extended confiscation may also be ordered on property transferred to third parties if they knew or should have known that the purpose of the transfer was to avoid confiscation (CC, Art. 112¹(1). Authorities confirmed that Art. 112¹ is applicable to confiscation of proceeds from ML (ML acts are punished with prison from 3-10 years (AML/CFT Law, Art.49 (1)).

(b) Proceeds of (including income or other benefits derived from such proceeds), or instrumentalities used or intended for use in, ML or predicate offences

Legal provisions allow confiscation of *proceeds of (including income or other benefits derived from such proceeds) ML or predicate offence* from criminal defendants and from third parties (AML/CFT Law, Art. 51(1) and (3); CC, Art. 112(6) and Art. 112¹(2)). As for the confiscation of *instrumentalities used or intended for use in, ML or predicate offences, the legal provisions allow to confiscate the instrumentalities used or intended for use in ML or predicate offences from criminal defendants while the confiscation of instrumentalities is possible from third party who knew the purpose of their use (AML/CFT Law, Art. 51; CC, Art. 112(1)(b)¹⁰⁰.*

(c) Property that is the proceeds of, or used in, or intended or allocated for use in the financing of terrorism, terrorist acts or terrorist organisations

Legal provisions allow for confiscation of the property that is the proceeds, or used in, or intended or allocated for use in the TF, terrorist acts or terrorist organisations from criminal defendants and third parties (AML/CFT Law, Art. 51(1); CC, Art. 112(1)a) and b) and Art. 112¹(1) and(2)). Confiscation from a third party is possible if they knew the purpose of the use of the property as explained above.

(d) Property of corresponding value

Legal provisions allow for confiscation of the property of corresponding value from criminal defendant and third parties (AML/CFT Law, Art 51(2) and (4); CC, Art.112(5), Art 112¹(2) and (6).

Criterion 4.2 – Romania has measures, including legislative measures, that enable competent authorities to:

(a) Identify, trace and evaluate property that is subject to confiscation

The interim measures include seizing movable or immovable goods. The body enforcing constraint is under an obligation to identify and evaluate the seized assets, with the use of, if necessary, evaluators or experts (CPC, Art. 252(1)). Prosecutor or the court have the access to the electronic databases held by the state administration bodies and state administration bodies that hold electronic databases are obliged to cooperate with the prosecutor or the court in order to ensure their direct access to the information existing in the electronic databases, according to the law (CPC, Art.267). By means of seizing objects and documents, the prosecution may request from any competent institution information and documents relating to sums of money or movable and immovable property held by the person being prosecuted or by a third party related to him/her. For example, prosecutors may request the National Agency for Cadastre and Real

¹⁰⁰ Art.112(1)(b) of the CC stipulates that *goods which have been used, in any way, or intended to be used in the commission of an act provided for by the criminal law, if they are those of the perpetrator or if, belonging to another person, he/she knew the purpose of their use shall be subject to special confiscation.*

Estate Publicity (ANCPI) to provide data on real estate owned by a person, or request that the Local Taxes and Dues Department provide data on real estate and vehicles owned.

The prosecution authorities (via appointed police officers from the structures for fighting organised crime and structures for fighting economic crime) can also access the DCOC - PATRIMVEN database from the Fiscal Administration to identify declared incomes, movable and immovable assets (cars and real estate) for which taxes are paid and also the register of bank accounts and safe deposit boxes, NTRO, financial information and analysis from the NOPCML-FIU, and assets held abroad through NAMSA. NAMSA has direct access to the following databases: Population Databases (this includes personal information, passport information and vehicle information), the Aircraft Register, Company Register, Boat Register, On-line Land Register, Bank Account Register, Fiscal Administration databases (information about incomes, beneficial owner etc.), Border Police and General Immigration Inspectorate databases. NAMSA has established in 2015 and according to law it is obliged to cooperate with the competent Romanian public authorities and institutions, with a view to identifying and tracing property that may be subject to precautionary measures in the course of criminal judicial proceedings, special or extended confiscation, by transmitting data and information to which it has direct or indirect access (Law no. 318/2015 *on the establishment, organisation and functioning of the NAMSA*, Art. 4(1)).

The tracing of certain categories of property subject to confiscation may also be carried out through the National Informatics System for Alerts (SINS). According to Article 18(1) (2) of Law no. 141/2010 *on the establishment, organisation and operation of the National Signals Information System and Romania's participation in the Schengen Information System*, alerts on property sought for seizure or to be used as evidence in criminal proceedings are entered into the SINS by the competent national authorities at the request of the prosecution authorities or the court and may relate to the different type of property (e.g. motor vehicles, trailers, documents, banknotes, firearms etc.).

(b) Carry out provisional measures, such as freezing or seizing, to prevent any dealing, transfer or disposal of property subject to confiscation

According to the AML/CFT Law, it is mandatory to take precautionary measures when ML or TF has been committed in line with the provisions of the CPC (AML/CFT Law, Art. 50). Provisional measures consist in the freezing of movable or immovable property by seizing it (CPC, Art 249(2)). Law provides provisional measures to prevent any dealing, transfer or disposal of property subject to confiscation. The public prosecutor, during the criminal investigation, the judge of the preliminary chamber or the court, ex officio or at the request of the prosecutor, in the preliminary chamber procedure or during the trial, may take precautionary measures, by order or, as the case may be, by reasoned conclusion, in order to avoid the concealment, destruction, alienation [including transfer or disposal] or evasion from prosecution of assets that may be subject to special confiscation or extended confiscation or which may serve to guarantee enforcement of the penalty of the fine or of the judicial costs or of the reparation of the damage caused by the crime (CPC, Art 249(1)).

(c) Take steps that will prevent or void actions that prejudice the country's ability to freeze or seize or recover property that is subject to confiscation

When property is seized for confiscation, a general prohibition on disposal of the asset comes into effect and any transactions entered in violation of the prohibition are considered void, unless the transaction was done in good faith (Civil Code, Art.116). In addition to provisional measures to prevent any dealing, transfer, or disposal of property subject to confiscation (see above) the CPC

provides opportunity to carry out interlocutory sales of movable and immovable assets (CPC, Art 252¹). According to authorities, these provisions were introduced in order to preserve the value of the seized assets and to guarantee the effective execution of confiscation. NAMSA has clear duties management of frozen/seized assets and conduct interlocutory sales (Law 318/2015, Articles 27, 28, 29 and the following).

(d) Take any appropriate investigative measures

The CPC provides the means for an effective investigation in cases involving ML, predicate offences and TF offences, and all evidence and evidentiary procedures, as well as all other tools available to prosecuting authorities that can be used for investigating relevant offences (see also R.30 and 31).

In criminal cases, DCOC officers (on the basis of orders to delegate the power of attorney issued by DIOCT prosecutors) carry out the measures ordered by the ordinances, both on the identification of assets and on the establishment of precautionary measures (CPC, Art. 303).

Criterion 4.3 – There are measures in place to protect rights of *bona fide* third parties (see analysis under c.4.1(b) and (c)). Third parties acting in good faith are protected, as it results from Art. 112 – special confiscation and Art. 112¹ – extended confiscation of the CC. Relevant here are the following: Art. 112 para 1 let. b and c., texts providing that assets belonging to third parties may be confiscated if that person was aware of the assets’ purpose of use; Art. 112 para 3 of the CC provides that in the cases provided under para 1 let. b and c, if the third party was not aware of the assets’ purpose of use, the confiscation in equivalent shall be ordered. Art. 112¹ para 2 and 3 are also relevant: the extended confiscation may apply to assets transferred to third parties, if they knew or should have known that the purpose of the transfer was to avoid confiscation.

From the procedural perspective, the CPC provides several ways for the defendants and other interested parties to challenge the interim measures, as following: (i) Art. 250 provides the possibility of contesting the interim measures; (ii) Art. 250¹ refers to the possibility to challenge the interim measures ordered during trial; (iii) Art. 250² is regulating the obligation for the judiciary to verify periodically – every 6 months during investigation or every year during trial – the interim measures; (iv) Art. 252² and Art. 252³ which provide the possibility of interlocutory sale of seized assets during investigation or trial, also regulate the possibility of challenging the measures, complemented with Art. 252⁴ which provides the possibility to contest the manner of executing the interlocutory sale.

Criterion 4.4 – Mechanisms are in place to manage, and where necessary, dispose of seized and confiscated assets. Romania has mechanisms for managing and, when necessary, disposing of property frozen, seized through NASMA (established in 2015 and became fully operational in 2016) which is responsible for managing and when necessary, disposing of frozen/seized property (Law 318/2015, Articles 27, 28, 29 and the following). NAMSA has responsibility to secure and manage frozen/seized assets as well as to manage national integrate electronical system of criminal assets (Law 318/2005, Art.3).

Confiscated assets of any type, entered into the state’s private property and that fulfil the conditions for being traded, are sold by the fiscal bodies (Fiscal Administration and its subordinated units). Procedures are in place to evaluate and manage the sale of assets (GEO No 14/2007), possibility of public and social reuse of mobile confiscated assets (GEO No 14/2007) and selling confiscated immovable property (Law no. 216/2016). Regarding confiscating assets NAMSA has a limited mandate regarding the procedure for social or public reuse of imovable assets. If in 45 days from the date an imovable confiscated asset is evaluated there is now

decision of NAMSA on reuse, the asset is sold by the Fiscal Administration. Some categories of products are exploited by other state authorities applying special procedures regulated by other normative acts (e.g., goods described in Art. 5(2) of GEO 14/2007 — military goods, medical goods, objects of worship and cultural heritage, drug precursors, toxic substances and preparations, nuclear and radioactive materials, etc.).

Weighting and Conclusion

R.4 is rated C.

Recommendation 5 - Terrorist financing offence

The current R.5 was previously assessed under the old Special Recommendation (SR) II in the 2014 MER. Romania was rated PC for the old SR.II in the 2014 MER. Deficiencies included: (i) the TF offence did not cover the collection of funds with the knowledge that the funds are to be used by a terrorist organisation or by an individual terrorist; (ii) the TF offence had an additional purposive element for the FT of a terrorist organisation or of an individual terrorist (i.e. to be used for committing a terrorist act); (iii) the TF offence partly applied to “funds” as defined under the old criterion II.1(b); (iv) the financing of the legitimate activities of a terrorist organisation or an individual terrorist was not covered by the TF offence; (v) it remained unclear due to the absence of judicial practice whether the financing of acts which constitute an offence within the scope of and as defined in one of the treaties listed in the annex to the Convention, was in practice required to meet one additional condition as set out in Art. 2 of the Law on Terrorism; and (vi) the attempt to commit a FT offence and partially the conduct set out in Article 2(5) of the FT Convention was not criminalised. Upon adoption of the 2014 MER, Romania was placed under the regular follow-up procedure and then under CEPs. Romania addressed deficiencies identified in previous evaluations by amending the Law on Terrorism.¹⁰¹ Amendments to the TF legislation.

Criterion 5.1 – Romanian has criminalised TF in line with the Art.2 of the TF Convention¹⁰² (Law on Terrorism, Art.1).¹ Romania adequately covers all acts of terrorism for which financing is an offence. The material elements cover the commission, preparing, promoting, supporting the terrorist entity, collection, or supply of licit and illicit funds (Law on Terrorism, Articles 1, 4, 32, 33, 35, 35¹, 36(1), 38³). It is also not necessary for the act itself to occur or that the funds were actually used to commit acts of terrorism or to support a terrorist entity.

Criterion 5.2 – The TF offence applies to providing or collecting funds or other assets and TF offences extend to any persons who wilfully supply (or provide) or collect funds directly or indirectly with the intention that they should be used, or knowing that they are to be used, in whole or in part, for committing terrorist acts or for supporting a terrorist entity (Law on Terrorism, Art 36(1)). Committing an offence for the purpose of obtaining funds or other assets, with the intention of them being used or knowing that they are to be used, in whole or in part, for committing terrorist acts or for supporting a terrorist entity is also criminalised (Law on Terrorism, Art 36(2)).

¹⁰¹ An amended definition of the TF offence was adopted with Law no. 187 from 24th of October 2012 on the application of Law no. 286/2009 regarding the CC, amending the Law on Terrorism. Those amendments to the TF offence were adopted but not yet in force at the time of the 4th round mutual evaluation onsite visit and thus were not considered for the 2014 MER.

¹⁰² Upon adoption of the 2014 MER, Romania was placed under the regular follow-up procedure and then under CEPs, including for deficiencies under SR II (TF Offence). To exit CEPs, Romania amended its laws, including the Law on Terrorism.

Romanian Law criminalises the financing of a terrorist entity (which includes the individual terrorist), even in the absence of a link to a specific terrorist act. Within the category of ‘terrorist entity’ no distinctions are drawn between terrorist organisations and individual terrorists and there is no specific designation of certain terrorist organisations as proscribed (Law on Terrorism, Art 4).

Criterion 5.2^{bis} – Art. 35¹ para (1) and (3) of the Law on Terrorism criminalise the travelling (para 1) and the organisation or facilitation of travelling (para 3). According to Article 35¹ and Article 38³ of the Law on Terrorism, the movement for terrorist purposes (foreign terrorist fighters) is stipulated as an offence and represents a terrorist act, and the collecting of funds and making them available for the perpetration of terrorist acts represent a TF offence, according to Article 36(1) of Law on Terrorism.

Criterion 5.3 – The TF offences extend to any funds or other assets whether from a legitimate or illegitimate source (Law on Terrorism, Art. 4 point 8 and Art. 36). There is also no provision that would exclude the applicability of the TF offence to funds consisting of VAs.

Criterion 5.4 – The TF offence does not require that the funds or other assets were actually used to carry out or attempt a terrorist act or be linked to a terrorist act. The TF offence (Law on Terrorism, Art. 36) does not require that funds should be linked to a specific terrorist act(s). The TF offence provides “...for supporting a terrorist entity” linking it only with supporting the terrorist organization or terrorist individual and not necessarily any terrorist act (Law on Terrorism, Art. 36). The attempted offences are also punishable (Law on Terrorism, Art. 37¹). The production or procurement of the means or the instruments, the implementation of measures, as well as the agreement between at least two persons with a view to committing a terrorist act, and the unequivocal expression, regardless of manner or context, of the intention to commit a terrorist act are considered attempts (Law on Terrorism, Art. 37¹(2)).

Criterion 5.5 – Intent and knowledge can be inferred from objective factual circumstances (Law on Terrorism, Art. 37¹ (3)).

Criterion 5.6 – Proportionate and dissuasive criminal sanctions apply to natural persons convicted of TF. According to Article 36 (1) of the Law on Terrorism, the TF offence is punished with 5 to 12 years imprisonment and prohibition of certain rights set out in Art. 66(1) of the CC.

Criterion 5.7 – Criminal liability and sanctions apply to legal persons and all sanctions are proportionate and dissuasive. Romanian law provides for the criminal liability of all legal persons in a general manner, and this can be triggered for any crime provided by the law (CC, Art. 135(1) – (3)). The range of natural persons that can trigger the criminal liability of legal persons varies: (i) natural persons who manage the legal entity; (ii) persons who act as representatives of the legal entity; and (iii) persons who have a lawful or factual link to the legal entity.

The penalties applicable to legal entities include main penalties and complementary penalties (CC, Art.136(1)). Please refer to C.3.10 for further details on main penalties and complementary penalties (CC, Art. 136 – 145).

The criminal liability of the legal person does not exclude the criminal liability of the natural person who contributed to the commission of the same deed (CC, Art. 135 (3)). Administrative sanctions for non-compliance with obligations under the following laws and regulations does not exclude criminal liability in the event of conviction for the TF offence.

Criterion 5.8 – A number of activities related to the TF offence also constitute offences, including: (a) attempted TF (CC, Articles 32 and 33; Law on Terrorism, Art. 37¹(1)); (b) participate as an

accomplice in a TF offence or attempted offence (CC, Articles 48(1)(2) and 49; Law on Terrorism, Art 35); (c) organise or direct others to commit a TF offence or attempted offence (CC, Articles 47 and 49; Law on Terrorism, Articles 33¹ and 37¹(1)); and (d) contribute to the commission of one or more TF offence(s) or attempted offence(s), by a group of persons acting with a common purpose (Law on Terrorism, Art.35 and CC, Art 367).

Criterion 5.9 – Romania has designated the TF offence as ML predicate offence through its application of “all crimes” approach. See c.3.2 for further details.

Criterion 5.10 – The TF offence applies, regardless of whether the person alleged to have committed the offence(s) is in the same country or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located, or the terrorist act(s) occurred/will occur (CC, Articles 9 -11).

Weighting and Conclusion

R.5 is rated C.

Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing

In the 4th round MER, Romania was rated PC with SR III since: (i) no domestic lists had been issued with respect to persons formerly known as EU internals; (ii) it was unclear that the Fiscal Administration’s powers were broad enough to ensure that all categories of funds, assets or resources envisaged under UNSCR 1373 were effectively frozen; and (iii) deficiencies identified under R.3 had an impact on compliance with c.III.11.

Criterion 6.1(a) – The MoFA is the authority, which in cooperation with other competent authorities in the field of international sanctions, is responsible for proposing persons and entities to the UN sanctions committees established pursuant to all UNSCRs, including 1267 (1999), 1988 (2011) and 1989 (2011) (GD no. 16/2017, Art. 2(20)). The CIISI, which is coordinated by the MoFA, serves as the platform for determining Romania's position regarding the adoption, modification, suspension or termination of international sanctions.

At the EU level, Romania implements TFS pursuant to UNSCR 1267 and 1988 (on Afghanistan) through EU Regulation 753/2011 and Council Decision 2011/486/CFSP, and UNSCR 1267/1989 (on Al-Qaeda) through EU Regulation 881/2002 (and its successors).

(b) There is no formal mechanism for identifying targets for designation, based on the designation criteria foreseen by UNSCRs. Nevertheless, the CIISI, which is coordinated by the MoFA, serves as a platform with the aim of ensuring a general framework for cooperation, including consultation in order to harmonize the activities of authorities and public institutions for implementation of international sanctions (GD no. 1541/2009, Art 4(1)). However, international sanctions established by the UN and the EU, including the mechanisms envisaged therein are binding in domestic law for all public authorities, institutions, natural and legal persons in Romania, from the moment of their adoption. (GEO no. 202/2008, Art. 3(1)).

(c) There are no special rules in Romania on the evidentiary standard for making proposal for designation, nor is there any information on whether designations established pursuant to UNSCRs are not conditional upon the existence of criminal proceedings.

At the EU level, Romania would apply evidentiary standard of proof as envisaged under EU Common Position 931/2001.

(d) While there is no formal mechanism for following the procedures established by the UNSCR 1267/1989 and 1988 committees, the MoFA coordinates the implementation of all UNSCRs, including the evaluation of information gathered and ensures compliance with the requirements of all UNSCRs, as well as with standard listing forms established by those UNSCRs (GD no. 16/2017, Art. 2(20)).

(e) See c. 6.1(d).

Criterion 6.2(a) – For the national level, see c. 6.1(d).

At the EU level, the EU Council is the competent authority responsible for making designations of persons or entities according to EU Regulation 2580/2001 and EU Common Position 2001/931/CFSP. These do not include persons, groups and entities having their ‘roots, main activities and objectives with the EU (EU internals).

(b) Romania does not have a specific mechanism for identifying targets for designation, based on the designation criteria set out in UNSCR 1373. However, it has a mechanism for drawing up and updating national lists of natural and legal persons suspected of committing or TF acts. Principally, the mechanism envisages the creation of such lists through coordination by the members of the NSPCT. The lists resulting from this collaboration are sent to the MoF, which compiles a single list that is then submitted to the government for approval (Law on Terrorism, Art. 26, 27).

At the EU level, the COMET Working Party of the EU Council applies designation criteria consistent with the designation criteria of UNSCR 1373 set in EU Common Position 2001/931/CFSP (Art.1(2) and (4)).

(c) International sanctions adopted by other states or international organizations that are not binding on Romania become binding in domestic law by adopting a normative act, which establishes the necessary implementation measures, including the criminalization of their violation. However, no such national normative act has been adopted nor did the authorities reveal that there is a requirement for a prompt determination to be made.

At the EU level, requests are received and examined by the COMET Working Party, which evaluates and verifies the information, including the reasonable basis for the request, to determine whether it meets the criteria set forth in UNSCR 1373 as set in EU Common Position 2001/931/CFSP.

(d) There are no special rules in Romania on the evidentiary standard for making proposal for designation, nor did the authorities reveal whether such designations are not conditional upon the existence of criminal proceedings.

At the EU level, the COMET Working Party, applies the standard of proof of “reasonable basis”, which is not conditional upon the existence of a criminal proceeding.

(e) Romania does not have a national normative act based on which to request another state to designate a person or entity.

At EU the level, there is no specific mechanism that would allow for requesting non-EU Member States to implement the EU restrictive measures.

Criterion 6.3(a)– At the EU level, all EU Member States are required to provide each other with the widest possible range of police and judicial assistance on TFS matters, inform each other of any actions taken, co-operate and supply information to the relevant UNSCs (EU Regulation

81/2002, Art. 8; EU Regulation 2580/2001, Art. 8; and Common Position 2001/931/CFSP, Art. 4)). For UNSCR 1373; however, under Council CP 2001/931/CFSP EU nationals are not subject to the freezing measures.

At the national level, the CIISI provides the framework for consultation and exchange of information necessary for Romania to adopt, amend, suspend or terminate international sanctions, namely through cooperation and exchange of information between its members, to develop and/or support facts on which listing proposals are made (GD no. 1541/2009, Art 4(3); and GEO no. 202/2008, Art 14 (b)). However, there are no explicit requirements for identification of individuals or entities for designation based on reasonable grounds, or reasonable basis.

(b) At the EU level, designations take place without prior notice to the person/ entity identified (EU Regulation 1286/2009 preamble, (5) and Art. 7a(1) of the Regulation 881/2002). The Court of Justice of the EU makes an exception to the general rule that notice must be given before the decision is taken in order not to compromise the effect of the designation.

At the national level, there are no procedures or mechanisms for operating *ex parte* against a person or entity that has been identified or whose designation is being considered.

Criterion 6.4 – At the EU level, the procedure in respect of designations made by the relevant committees of the UNSC implies a delay between the date of a designation by the UN and the date of its transposition into European law under EU Regulations 881/2002 and 753/2011 respectively, because of the time taken to consult between EC departments and translate the designation into all official EU languages. Thus, implementation of TFS pursuant to UNSCRs 1267/1989 and 1988, does not occur ‘without delay’ i.e., ideally within hours as required by the FATF Standards. For resolution 1373, TFS are implemented without delay because, once the decision to freeze has been taken, EU Regulation 2580/2001 is immediately applicable within all EU Member States.

International sanctions established by the UN and the EU are binding in domestic law for all public authorities, institutions, natural and legal persons in Romania, from the moment of their adoption (GEO no. 202/2008, Art. 3(1)).

Criterion 6.5(a) – At the national level, all natural and legal persons that have information on funds and economic resources subject to international sanctions established by the UN must transmit it immediately to the Fiscal Administration (GEO no. 202/2008, Art. 18(2)). The Fiscal Administration then orders, without delay, the blocking of funds or economic resources owned or controlled, directly or indirectly, by designated persons or entities, including funds and economic resources derived from or generated from assets owned or controlled by natural or legal persons identified as designated persons or entities (GEO no. 202/2008, Art. 19(1 and 1¹)). This is then immediately communicated to all respective supervisory authorities, to the persons or entities who transmitted the notification and to other institutions with relevant tasks of Romania (GEO no. 202/2008, Art. 19(2), (3), (4)).

In addition, natural or legal persons are required not to carry out any operations in case of encountering a situation with respect to any property subject to international sanctions, and immediately notify the competent authorities (GEO no. 202/2008, Art. 24(1)). Nevertheless, national legislation does not explicitly provide for freezing without prior notice.

At the EU level, in relation to UNSCRs 1988 and 1267/1989, EU regulations establish the obligation to freeze all the funds and economic resources belonging to a person or entity designated on the European list (EU Regulation 881/2002 (Art. 2(1)), as amended by EU

Regulation 363/2016 and EU Regulation 753/2011 (Art. 3)). For UNSCR 1373, the obligation for natural and legal persons to freeze the assets of designated persons derives automatically from the entry into force of the EU regulation, without any delay and without notice to the designated individuals and entities (EU Regulation 2580/2001 (Art. 2 (1a))).

(b) The Fiscal Administration orders, without delay, the blocking of funds or economic resources owned or controlled, individually or jointly, directly or indirectly, by designated persons or entities, including funds and economic resources derived from or generated from assets owned or controlled by natural or legal persons identified as designated persons or entities (GEO no. 202/2008, Art. 19(1 and 1¹)). However, this does not extend to funds or other assets of persons and entities acting on behalf of, or at the direction of, designated persons or entities.

At the EU level, freezing obligations extend to all funds and economic resources, including interest, dividends or other income on or value accruing from or generated by assets belonging to, owned, held or controlled directly or indirectly by the designated person or entity or a third party acting on their behalf or at their direction. This is ensured for UNSCR 1267/1989 through EU Regulation 881/2002 (Art. 1(1) and 2(1)), and for UNSCR 1988 – cumulatively through the provisions of Council Decision 2011/486/CFSP (Art.4(1)) and EC Regulation 753/2011 (Art.1(a) and Art.3(1)). There is no explicit reference to assets owned jointly. With regard to UNSCR 1373, the freezing obligation applies to all funds, other financial assets and economic resources belonging to, or owned or held by the designated person or entity (EU Regulation 2580/2001, Art. 2(1(a))). There is no explicit reference to the freezing of funds or other assets controlled by, indirectly or jointly owned by, or derived from assets owned by, or owned by a person acting on behalf of, or at the direction of a designated person or entity. However, this gap is largely mitigated by the EC's ability to designate any legal person or entity controlled by, or any natural or legal person acting on behalf of, a designated person or entity (EU Regulation 2580/2001, Art.2(3) (iii) and (iv)). While the gap related to the absence of provisions on the assets jointly owned, as identified in all three instances remains, the non-binding EU Best practices for the implementation of restrictive measures (8519/18, para. 34) and EU Council Sanctions Guidelines (para. 55a) clarify this matter.

(c) At the national level, there is no specific requirement explicitly prohibiting Romanian nationals, or any persons and entities within Romania, from making any funds or other assets, economic resources, or financial or other related services, available, directly or indirectly, wholly or jointly, for the benefit of designated persons and entities.

At the EU level, UNSCR1267/1989 is implemented through the prohibition to make available funds or economic resources, directly or indirectly, to, or for the benefit of designated persons and entities, to entities owned or controlled directly or indirectly and acting on behalf of or the direction of those. These requirements are obligatory for the EU nationals and persons and entities within the EU jurisdiction. The prohibition is waived when authorised or notified. This is ensured cumulatively through the provisions of the Council Decision 2016/1693/CFSP (Art.3(2, 5)) and EU Regulation 881/2002 (Art. 2(2-2a), Art.2a and Art.11). The provisions of the UNSCR 1988 are implemented cumulatively through the prohibitions and derogations as set out in the Council Decision 2011/486/CFSP (Art.4(2 and 3) and EC Regulation 753/2011 (Art.3(2) and Art.5). In both instances there is no explicit reference to assets owned jointly.

With regard to UNSCR 1373, the prohibitions and derogations are implemented through EU Regulation 2580/2001 (Art. 2(1(b)), Art.6 and Art.10). There is no explicit reference to the prohibitions with respect to funds or other assets controlled by, or indirectly, or jointly owned

by, or derived from assets owned by, or owned by a person acting on behalf of, or at the direction of a designated person or entity. However, this gap is largely mitigated by the EC's ability to designate any legal person or entity controlled by, or any natural or legal person acting on behalf of, a designated person or entity (EU Regulation 2580/2001, Art.2(3) (iii - iv)).

While the gap related to the absence of provisions on the assets jointly owned, as identified in all three instances remains, the non-binding EU Best practices for the implementation of restrictive measures (8519/18, para. 34) and EU Council Sanctions Guidelines (para. 55a) clarify this matter.

(d) At EU level, EU regulations, including designations decided at the European level are published in the Official Journal of the EU. The EU Council provides guidance by means of the EU Best Practices for the effective implementation of restrictive measures.

At the national level, the MoFA publishes the information about international sanctions established by UN sanctions committees in the Official Gazette of Romania, within 5 days of adoption (GEO no. 202/2008, Art. 5(2)). The supervisory authorities have an obligation to ensure the publicity of the provisions of the acts establishing mandatory international sanctions in Romania, by either posting the relevant information on their own websites or other forms of advertising (GEO no. 202/2008, Art. 5(1)). However, there is no formal requirement for communicating clear guidance to FIs and DNFBPs that may be holding targeted funds and economic resources, on their obligations for taking action.

(e) At EU level, natural and legal persons (including FIs/DNFBPs) are required to provide immediately any information about accounts and amounts frozen under EU legislation according to EU Regulation 881/2002 (Art. 5.1), EU Regulation 2580/2001 (Art. 4), and EU Regulation 753/2011 (Art. 8).

At the national level, persons, who have data and information regarding designated persons or entities that own or have control over goods; or on transactions related to goods with which designated persons or entities are involved, have the obligation to notify the competent authority, as soon as they become aware of information (international sanctions, namely UNSCRs) requiring notification (GEO no. 202/2008, Art. 7(1)).

Moreover, information on funds and economic resources subject to international sanctions must be transmitted immediately to the Fiscal Administration, as well as other relevant public authorities or institutions. (GEO no. 202/2008, Art. 18(2)). However, this does not specifically extend to attempted transactions or explicit freezing measures.

(f) The application, in good faith, of provisions of the GEO no. 202/2008 by natural and/ or legal persons may not entail their disciplinary, civil or criminal liability (GEO no. 202/2008, Art. 27).

At EU level, EU Regulations 881/2002 (Art. 6) and 753/2011(Art. 7) protect third parties acting in good faith.

Criterion 6.6(a) – At EU level, there are procedures to seek de-listing through EU regulations (EU Regulation 753/2011, Art. 11(4) for designations under UNSCR 1988 and EC Regulation 881/2002, Art. 7a and 7b1 for UNSCR 1267/1989).

Romanian legislation establishes that international sanctions, including those established pursuant to UNSCRs are binding and directly applicable to all natural and legal persons in Romania. This is also the case for the procedures envisaged as a result of UNSCRs, including those pertaining to de-listing.

However, there are no specific and publicly available procedures for submitting de-listing requests in accordance with procedures adopted by the 1276/1989, 1988 or other UN sanctions committees.

(b) For UNSCR 1373 designations, the EU has de-listing procedures under Regulation 2580/2001. De-listing is immediately effective and may occur *ad hoc* or after mandatory 6-monthly reviews.

For measures at the national level, see c. 6.2(b).

(c) At the EU level, pursuant to EU legislation, designated persons and entities may challenge the EU act imposing relevant sanctions by instituting proceedings (according to Article 263 (4) and Article 275 (2) TFEU) before the EU Court of Justice, regardless of whether the designation was initiated by the EU on its own motion, or pursuant to UNSCRs.

For measures at the national level, see c.6.2(b).

(d) and (e) At the EU level, for designations under UNSCRs 1267/1989 and 1988, designated persons and entities are informed of the listing, its reasons and legal consequences, their rights of due process and the availability of de-listing procedures including the UN Office of the Ombudsperson (UNSCR 1267/1989 designations) or the UN Focal Point mechanism (UNSCR 1988 designations).

For measures at the national level, see c.6.6(a). In addition, the website of the Fiscal Administration has information on the availability of the UN Office of the Ombudsperson, including the contact number and email details. There are no specific and publicly known procedures or mechanisms for submitting de-listing requests for persons or entities designated pursuant to UNSCRs.

6.6(f) At the EU level, upon verification that the person/entity involved is not designated, the funds/assets must be unfrozen, according to EU Regulations 881/2002 and 2580/2001.

At the national level, there are special procedures for persons, entities or goods affected by error by the freezing mechanism that allow a person to notify the competent authority in writing, reporting any identification errors; and the competent authority, within 15 working days from the receipt, shall communicate its decision to the person making the request Order of the President of the Fiscal Administration no 1984/2019 (Art. 25). In addition, the CIISI, within the competences of harmonizing the actions of the competent authorities in the implementation of international sanctions, must screen for incidences of identification errors regarding listed persons/entities or frozen funds (GEO no. 202/2008, Art. 10 and 13). However, there are no specific publicly known mechanisms explicitly providing for the unfreezing of funds and economic assets of persons or entities with the same or similar name as designated persons or entities, who are inadvertently affected by the freezing mechanism (i.e., false positive).

(g) At EU level, legal acts on de-listing are published in the Official Journal of the EU and information on the de-listings is included in the Financial Sanctions Database maintained by the EC (EU Regulation 881/2002, Art. 13; 753/2011, Art. 15; 2580/2011, Art. 11).

At the national level, the mechanism used for communication of designations is the same as for de-listings, namely by way of publication on the websites of the relevant competent authorities. Besides publication, no specific mechanism exists for ensuring the timely communication of de-listings and unfreezing to FIs and DNFBPs, including on their obligations in this respect.

Criterion 6.7 - At EU level, there are procedures in place to authorize access to frozen funds or other assets which have been determined to be necessary for basic expenses, for the payment of

certain types of expenses, or for extraordinary expenses (EU Regulations 881/2001, Art. 2(a); 753/2011, Art. 5; and 2580/2001, Art. 5–6).

At the national level, a request can be made in writing to the relevant competent authority. The relevant competent authority, after obtaining an approval from the MoFA on compliance with international law, shall communicate its decision to the requester within 15 days from the receipt of the request. At the same time, if the request for derogation is requested for basic needs or for humanitarian reasons, the relevant competent authority shall communicate its decision to the requester within 5 days from the receipt of the request (GEO no. 202/2008, Art. 8).

Weighting and Conclusion

The following shortcomings are identified, notably: (i) absence of a formal mechanism for identifying targets for designation, based on the designation criteria foreseen by UNSCRs; (ii) absence of special rules on the evidentiary standard for making proposal for designation, nor information on whether designations are not conditional upon the existence of criminal proceedings; (iii) absence of formal mechanism for following the procedures established by the UNSCRs; (iv) absence of explicit requirements for identification of individuals or entities for designation based on reasonable grounds, or reasonable basis; absence of procedures or mechanisms for operating *ex parte* against a person or entity being considered for designation; (v) at the national level, the freezing mechanism does not extend to funds or other assets of persons and entities acting on behalf of, or at the direction of, designated persons or entities; and no provisions prohibiting the making of any funds or other assets available, directly or indirectly, wholly or jointly, for the benefit of designated persons and entities; no requirement for communicating clear guidance to obliged entities, including DNFBPs that may be holding targeted funds and economic resources, on their obligations for taking action; and (vi) absence of publicly available procedures for submitting de-listing requests to the relevant UN sanctions committees; and (vii) no mechanism for ensuring the timely communication of these de-listings and unfreezing to FIs and DNFBPs and guidance regarding delisting or unfreezing. It should be noted that most of the above listed shortcomings are mitigated to some extent by the existence of the EU legal framework on which Romania relies. **R.6 is rated PC.**

Recommendation 7 - Targeted Financial Sanctions Related to Proliferation

Requirements under R.7 were added to the FATF Recommendations when they were last revised in 2012 and, therefore, were not assessed during Romania's 4th round MER.

Criterion 7.1 – As explained under R.6, the national legal framework on implementation of international sanctions established by the UN and the EU are binding in domestic law for all public authorities, institutions, natural and legal persons in Romania, from the moment of their adoption (GEO no. 202/2008, Art. 3(1)).

At the EU level, UNSCR 1718 and successor Resolutions on the Democratic People's Republic of Korea (DPRK) is transposed into the EU legal framework (the current legislative framework is based on Council Decision (CFSP) 2016/849 and Regulation (EU) 1509/2017)). UNSCR 2231 on Iran is transposed into the EU Legal framework through EC Regulation 267/2012 as amended by EC Regulations 2015/1861 and 1862.

Criterion 7.2(a) – At the EU level, EU Regulations require all natural and legal persons within or associated with the EU to freeze the funds/other assets of designated persons/entities. This obligation is triggered as soon as the Regulation is approved and the designation published in the

Official Journal of the EU (EU Regulations 267/2012, Art. 23, 23(a), 49; 1509/2017, Art. 1 and 34).

For measures at the national level, see c.6.5(a).

(b) At the EU level, the freezing obligation extends to all funds and economic resources belonging to, owned, held or controlled by a designated person or entity (EC Regulation 2017/1509, Art.34; EC Regulation 267/2002, Art.23 and 23a). This includes funds or other assets derived or generated from such funds (EC Regulation 2017/1509, Art. 2(12(d)), EC Regulation 267/2002, Art.1(l(iv))). However, (i) there is no explicit reference to funds or assets owned jointly, but the non-binding EU Best practices for the implementation of restrictive measures (8519/18, para. 34) clarify this matter; (ii) there is no reference to funds or assets of persons and entities acting on behalf of, or at the direction of, designated persons or entities, but (a) these situations are covered by the requirement to freeze funds or assets “controlled by” a designated person or entity and (b) by requiring the designation of any person or entity acting on behalf or at the direction of designated persons or entities (EC Regulation 2017/1509, Art.34(5); EC Regulation 267/2012, Art.23(2(a, c, e)) and 23a (2(c))).

For measures at the national level, see c.6.5(b).

(c) At the EU level, EU Regulations prohibit making available, directly or indirectly, funds or economic resources to designated persons or entities or for their benefit, unless otherwise authorized or notified in compliance with the relevant UN resolutions (EU Regulation 1509/2017, Art. 1 and 34; CR 267/2012 and 267/2012 Art. 23 (3), 23a(3) and 49).

At the national level, however, there are no legislative provisions explicitly prohibiting Romanian nationals, or any persons and entities within Romania, from making any funds or other assets, economic resources, or financial or other related services, available to or for the benefit of designated persons and entities.

(d) At the EU level, Regulations containing designations are published in the Official Journal of the EU. The EU also maintains a publicly available on-line consolidated list and has published Best Practices for the effective implementation of restrictive measures.

At the national level, the MoFA publishes the information about international sanctions established by UNSCRs in the Official Gazette of Romania, within 5 days of adoption (GEO no. 202/2008, Art. 5(2)). For more information see c.6.5(d).

(e) At the EU level, FIs and DNFBPs must immediately provide to the competent authorities all information that will facilitate observance of the EU Regulations, including information about the frozen accounts and amounts (EU Regulation 1509/2017, Art. 50 and 267/2012, Art. 40).

For measures at the national level, see c.6.5(e).

(f) At the EU level, the rights of bona fide third parties are protected at European level (EU Regulation 1509/2017, Art. 54 and 267/2012, Art. 42).

For measures at the national level, see c.6.5(f).

Criterion 7.3 – At the EU level, pursuant to EU Regulations 267/2012 (Art. 47) and 1509/2017 (Art. 55), EU Member States must take all necessary measures to implement EU regulations, which would include adopting measures to monitor compliance with the sanctions’ regime by FIs and DNFBPs.

At the national level, supervision of the implementation of TFS, as well as supervision of the implementation of restrictions on certain transfers of funds and financial services, adopted for the purpose of preventing nuclear proliferation, is carried out by public regulatory-supervisory authorities (NBR, FSA, NGO), SRBs, the NOPCML and the Fiscal Administration (GEO no. 202/2008, Art. 17(1), 17(2)). If the mentioned supervisory authorities find violations of international sanctions, they apply sanctions stipulated under GEO no. 202/2008, Art. 26 (GEO no. 202/2008, Art. 17(4)). In case of SRBs, the sanctions applied by their management structures are those provided for by the rules governing those professions (GEO no. 202/2008, Art. 17(5)). No additional information was made available to the AT by the SRBs on the exact sanctions applicable for TFS breaches.

The range of sanctions that may be applied as result of a breach of legislation on TFS are a fine between 10,000 – 30,000 lei (approx. EUR 2,000 – 6,000), as well as confiscation of goods used or resulting from a violation (GEO no. 202/2008, Art. 26(1)). These sanctions extend to natural persons that work in a public authorities and institutions. In addition, the following complementary sanctions can be applied for FIs/DNFBPs: (i) suspension of a license or authorization for a period of one to six months; (ii) withdrawal of a license or authorisation for certain operations or activities for the same period or permanently (GEO no. 202/2008, Art. 26(4)).

In addition, the public regulatory authorities can also establish complementary sanctions pursuant to regulations governing their respective fields.

Criterion 7.4 (a) – At the EU level, EU regulations contain procedures for submitting de-listing requests to the UNSC for designated persons or entities that, in the view of the EU, no longer meet the criteria for designation. Where the UN de-lists a person/entity, the EU amends the relevant EU Regulations accordingly. Petitioners of PF TFS can submit de-listing requests either through the UNSCR 1730 Focal Point or through their government (EU Best practices for the implementation of restrictive measures, 8519/18, para. 23).

The website of the Fiscal Administration has information on the availability of the focal point established pursuant to UNSCR 1730, including contact number and email details. There are no specific and publicly known procedures or mechanisms enabling listed persons and entities to submit de-listing requests pursuant to UNSCR 1730.

(b) At the EU level, publicly known procedures to unfreeze the funds or other assets of persons or entities with the same or similar name as designated persons or entities are provided for; specifically, the EU Best Practices on the implementation of restrictive measures provide guidance on the procedure on the cases of mistaken identity (8519/18, para. 8-17).

For measures at the national level, see c.6.6(f).

(c) At the national level, in the case of restrictions on transfers of funds and financial services provided pursuant to UNSCRs or by the EU aimed at preventing nuclear proliferation, the competent authority to receive notifications, to receive and resolve requests for authorization to conduct financial transactions is the NOPCML (GEO no. 202/2008, Art. 12 (1¹)).

At the EU level, there are procedures for authorizing access to funds or other assets if Member States' competent authorities have determined that the exemption conditions of UNSCRs 1718 and 1737 are met (EC Regulation 2017/1509, Art.35-36 and EC Regulation 267/2012, Art. 24, 26-28).

(d) At the EU level, delisting and unfreezing decisions are published in the Official Journal of the EU (EU Regulation 1509/2017 Art. 47 and 267/2012 Art. 46, amended by Regulation 2015/1861) and information on the de-listings is included in the Financial Sanctions Database maintained by the EC. Once published the measure is enforced, thus immediate communication of EU designations is ensured. The EU Council provides guidance by means of the EU Best Practices for the effective implementation of restrictive measures, which are periodically revised and are made publicly available.

For measures at the national level, see c.6.6(g).

Criterion 7.5(a) - At the EU level, the addition of interests or other earnings to frozen accounts is permitted pursuant to EU Regulation 1509/2017, Art. 34(9), 36 and EU Regulation 267/2012, Art. 29.

At the national level, there is a mechanism for authorizing transactions of designated persons and entities, which envisages a request addressed to the competent authority in the respective field, which in turn examines the reasons and justification of the request made (GEO no. 202/2008, Art. 23). However, there are no specific mechanisms for dealing with contracts, agreements or obligations that arose prior to the date on which an account became subject to PF related TFS.

(b) At the EU level, making payments under a contract entered into prior to designation are possible under the necessary conditions (EU Regulation 2015/1861, Art. 25, which amends EU Regulation 267/2012).

For measures at the national level, see c.7.5(a).

Weighting and Conclusion

The following shortcomings are identified at the national level, notably: (i) absence of a freezing mechanism extending to funds or other assets of persons and entities acting on behalf of, or at the direction of, designated persons or entities; absence of legislative provisions prohibiting making of any funds or other assets available, directly or indirectly, wholly or jointly, for the benefit of designated persons and entities (this is considered a very material shortcoming and thus weighted most heavily, especially in light of limited capacity of the obliged entities to identify indirect links and close associations with sanctioned individuals/entities); (ii) absence of publicly known procedures or mechanisms enabling listed persons and entities to submit de-listing requests pursuant to UNSCR 1730; (iii) and absence of mechanisms for dealing with contracts, agreements or obligations that arose prior to the date on which an account became subject to PF-related TFS. Most of the above listed shortcomings are mitigated to some extent by the existence of the EU legal framework on which Romania relies. **R.7 is rated PC.**

Recommendation 8 - Non-Profit Organizations

In the 4th round MER, Romania was rated PC with SR. VIII since: (i) a review of adequacy of domestic laws and regulations did not appear to have been completed; (ii) domestic reviews were not reassessed periodically; (iii) it was unclear whether there were adequate measures to ensure accountability and transparency; (iv) the limited outreach programme with the NPO sector on TF risk was not regular and did not cover comprehensively the scope and methods of abuse of NPOs, typologies and emerging trends; and (v) it had not been demonstrated that NPOs controlling significant portions of financial resources of the sector and substantial shares of the sector's international activities had been identified, or were adequately supervised or monitored.

Criterion 8.1(a) – Romanian legislation provides for two main types of non-governmental organizations: associations and foundations, which are legal persons of private law without patrimonial aim (Associations and Foundations Law).

An association is the subject of private law constituted by three or more persons who, on the basis of an agreement, share and without the right of restitution their material contribution, knowledge or contribution to work for carrying out activities in the general interest of certain communities or, as the case may be, in their personal non-patrimonial interest (Associations and Foundations Law, Art 4(1)).

A foundation is the subject of law established by one or more persons who, on the basis of a legal act between the living or mortis causa, constitute a patrimony affected, permanently and irrevocably, for the achievement of a purpose of general interest or, as the case may be, for some communities (Associations and Foundations Law, Art. 15(1)).

Two or more associations or foundations may establish a federation (Associations and Foundations Law, Art. 35). However, the country has not identified a subset of NPOs which would fall within the FATF definition, as well as NPOs, which by virtue of their activities or characteristics are likely to be at risk of TF abuse.

(b) Romanian authorities have not identified the nature of threats posed by terrorist entities for the NPOs that are at risk of being abused, as well as how terrorist actors abuse those NPOs.

(c) No systemic review of the adequacy of measures, including laws and regulations that relate to the subset of NPOs that may be abused for TF support, have been conducted. Subsequently, no actions were taken to address the risks.

While the NRA touches upon the risks and vulnerabilities of the NPO sector in Romania, the analysis is generic and does not explicitly analyse the TF element.

(d) According to the AML/CFT Law, NRAs shall be carried out at least every four years and updated according to the evolution of the risks and the effectiveness of the measures adopted to mitigate them (AML/CFT Law, Art. 1(6)). As mentioned in under c.8.1(c) the latest NRA of 2022, which touches upon the risks and vulnerabilities of the NPO sector in Romania, the analysis is generic in terms of ML/TF risks, and does not relate to a subset of NPOs that may be abused for TF purposes.

Nevertheless, there are no specific requirements to periodically re-assess the TF-related vulnerabilities of the NPO sector and their mitigation. No practical actions have been taken in this regard by the Romanian authorities.

Criterion 8.2(a) – For the purpose of promoting accountability, integrity, and public confidence in the administration and management of NPOs, the established legal framework requires that the incomes of associations or federations come from: a) the membership fees; b) interest and dividends resulting from the placement of available amounts, under legal conditions; c) dividends of companies established by associations or federations; d) incomes realized from direct economic activities; e) donations, sponsorships or bequests; f) resources obtained from the state budget or from the local budgets; g) other incomes foreseen by law (Associations and Foundations Law, Art. 46(1) and (2)). Similar requirements apply to foundations, except for the income (Associations and Foundations Law, Art. 46(1) letters b to g).

The AML/CFT Law also provides that BO information should be kept at the Central Register for Associations and Foundations of the MoJ (AML/CFT Law, Art. 19(4)). There is also a requirement

that, upon establishment, annually or whenever there is a change in the identification data of the beneficial owner, the association or foundation is obliged to communicate the identification data of the beneficial owner to the Central Register for Associations and Foundations of the MoJ. Federations acquire legal status and operate under the provisions as associations without patrimonial aim, the conditions applying accordingly (Associations and Foundations Law, Art. 35). Whenever changes relating to BO occur, associations and foundations are required to register the changes within the MoJ (Associations and Foundations Law, Art. 34⁴).

General requirements for associations and foundations apply, namely: personal identification code (for all declared natural persons) and fiscal identification code (for legal entities) at the time of establishment; information on BO; and the obligation to keep all records of transactions for at least 5 years (Associations and Foundations Law, Art. 27³).

However, there are no clear requirements in relation to integrity (i.e., fitness and propriety of the owners, controllers, senior managers and trustees); there is no separate process designed for verification of BO information; checks are mainly based on accuracy of information provided by an applicant; there are also no requirements for the publication of reports, such as, issuing annual financial statements with income/expenditures breakdown, including controls to ensure that all funds are accounted for and spent in a manner consistent with the purpose and objectives of NPOs. In addition, NPOs are not explicitly required to maintain information in their activities and objectives, as well as any supporting information on accompanying transfers.

(b) Before the AML/CFT Law was introduced in 2019, associations and foundations were obliged entities, were subject to the obligations provided for in the previous AML/CFT Law and were supervised by the NOPCML. However, since the new law entered into force, associations and foundations were no longer considered as obliged entities, thus not subject to supervision by the NOPCML. Nevertheless, before 2019 the NOPCML organized a series of training sessions for associations and foundations on various topics relating to AML/CFT; however, these training sessions were more generic and not specific outreach programs aimed at the donor community dealing with the potential vulnerabilities of NPOs to TF abuse and TF risk; nor on measures that NPOs can take to protect themselves against such abuse.

(c) No work has been undertaken with NPOs to develop best practices to address TF risks and vulnerabilities for the purpose of protecting NPOs to from TF abuse.

(d) There are no specific initiatives aimed at encouraging NPOs to conduct transactions via regulated financial channels other than restrictions on cash transactions allowing a large number of exemptions. According to Romanian legislation payments carried out by legal persons, authorized natural persons, individual enterprises, family enterprises, self-employed persons, self-employed natural persons, associations, and other entities with or without legal personality to/from any of these categories of persons are required to be made through non-cash payment instruments (Law no. 70/2015, Art 1 (1)). Exemptions from this rule are also allowed for associations and foundations to carry out cash collection/payment operations within certain daily cash ceilings (Law no. 70/2015, Art. 1 (2 and 3)).

Criterion 8.3 – Romania has not identified the subset of NPOs that fall under the FATF definition, nor identified subset of NPOs that are vulnerable to TF abuse, thus the application of risk-based measures to NPOs vulnerable to TF abuse cannot be demonstrated. As evidenced at c.8.2(a), Romania provided very little information on the requirements applicable to NPOs (except for registration) and no information on what authorities are responsible for checking compliance with these requirements, as well as powers to sanction for breaches thereof.

As mentioned in under c.8.2(b), before 2019 association and foundations were supervised by the NOPCML pursuant to the previous AML/CFT Law. When the previous AML/CFT Law was in force, supervision of NPOs was carried out by the NOPCML, pursuant to its operation procedures for off-site surveillance activity. In this context, general risk indicators considered for the purposes of off-site supervision were the following: the maximum total income/total expenses; the ratio between gross profit/loss and total revenues; reports on cash above the reporting limit; results of previous supervisions carried out by the NOPCML. Since 2019, there is no designated competent authority tasked with supervision and/or monitoring of NPOs. However, according to the AML/CFT Law, NOPCML can carry out checks on legal persons and entities without legal personality that are not supervised by other designated authorities, in case of case of suspicions of ML/TF (AML/CFT Law, Art.26 (3)).

Criterion 8.4(a) – Please see c.8.3.

(b) Currently, there is no mechanism for applying effective, proportionate and dissuasive sanctions for violations by NPOs or persons acting on behalf of those NPOs.

As explained under c.8.2(a), associations and foundations are required to register BO-related changes within the MoJ. Failure to do so may be sanctioned with a fine from approx. EUR 40 to 500 and if they continue not to comply with this obligation, then a higher fine is applied from approx. EUR 100 to 1000 (Associations and Foundations Law, Art. 34).

Until 2019, when associations and foundations were obliged entities and subject to supervision by the NOPCML, the legal framework provided that they were, in case of breaches, subject to sanctions as all other types of obliged entity. Please see information on warnings and fines imposed under IO.10.

Criterion 8.5(a) – Central Register for Associations and Foundations of the MoJ serves as the central register for maintaining information on associations and foundations (<https://www.just.ro/registrul-national-ong/>). The register is public, except for the data that are subject to the regulations on the protection of personal data and the data from the records regarding the real beneficiaries of the associations and foundations. In case of the analysis and processing of information that proves the existence of any indication of TF, the NOPCML shall immediately inform the POHJCC (AML/CFT Law, Art. 34(1)) and in cases of suspicions of TF to the RIS (AML/CFT Law, Art. 34(2)).

DIOCT has exclusive competence to carry-out the criminal prosecutions related to terrorism and TF offences, by means of specialized prosecutors (OUG no.78/2016, Art. 11, para. (1) and (2)).

However, there is no established mechanism enabling effective co-operation, co-ordination and information sharing to the extent possible among all levels of appropriate authorities or organisations that hold relevant information on NPOs.

(b) DIOCT has exclusive competence to carryout criminal prosecutions related to terrorism and TF by means of specialised prosecutors (OUG no. 78/2016, Art. 11(1) and (2)). DIOCT is authorized to possess and use adequate means for obtaining, verifying, processing, storing and discovering information regarding the crimes within its competence (GEO no. 78/2016, Art. 14). Although Romania has appointed a special prosecutor's office tasked with TF matters, the authorities have not proven that they possess investigative expertise to examine NPOs at suspect of TF abuse.

(c) Legal entities are obliged to obtain and hold adequate, correct and up-to-date information on BO, and make this information available to control bodies, supervisory authorities upon their

request (AML/CFT Law, Art. 19(1)). The BO information is registered in the Central Registers (AML/CFT Law, Art. 19(5)). Furthermore, criminal investigation bodies or the court can seize objects and documents of any natural person or legal entity on the territory of Romania in cases where there is a reasonable suspicion in relation to the preparation or commission of an offense and there are reasons to believe that an object or document can serve as evidence in a case (CPC, Art.170). No information has been provided by the authorities on access to financial and programmatic information.

(d) In cases when there are reasonable suspicions or reasons to suspect that an NPO has been involved in transactions related to TF, obliged entities have an obligation submit a STR to the NOPCML if they know, suspect or have reasonable grounds to suspect that the goods are criminal or used for the purposes of TF (AML/CFT Law, Art. 6(1)).

As explained under c.8.5(a), in case of the analysis and processing of information that proves the existence of any indication of TF, the NOPCML shall immediately inform the POHJCC (AML/CFT Law, Art. 34(1)) and in cases of suspicions of TF to the RIS (AML/CFT Law, Art. 34(2)).

However, this does not seem to specifically cover suspicions when the NPO (1) is involved in TF abuse and/or is a front for fundraising by a terrorist organisation; (2) is being exploited as a conduit for TF, including for the purpose of escaping asset freezing measures, or other forms of terrorist support; or (3) is concealing or obscuring the clandestine diversion of funds intended for legitimate purposes, but redirected for the benefit of terrorists or terrorist organisations. In this context, there is no specific mechanism to ensure that information on TF suspicion involving an NPO is shared promptly with the competent authorities.

Criterion 8.6 – The NOPCML may exchange information, on its own initiative or on request, on the basis of reciprocity, through protected channels of communication, with foreign institutions having similar functions or with other competent authorities of other Member States or third countries for the purpose of preventing ML/TF, including the recovery of the proceeds of such offences (AML/CFT Law, Art. 36).

However, there are no points of contact and procedures that are developed to respond to international requests specifically related to NPOs.

Weighting and Conclusion

There are moderate shortcomings relating to: (i) absence of the identification of NPOs that are at risk of TF abuse, TF threats relevant to NPOs; as well as of specific legal requirements to periodically re-assess and mitigate the TF-related vulnerabilities of the NPO sector; (ii) no systemic review of the adequacy of measures, including laws and regulations that relate to the subset of NPOs that may be abused for TF support, have been conducted; (iii) absence of clear policies that promote accountability, integrity and public confidence of NPOs; limited focus on TF risks when conducting outreach to NPOs; as well as no work undertaken with NPOs to develop best practices to address TF risks and vulnerabilities aimed at protecting NPOs to from TF abuse; (iv) absence of specific initiatives aimed at encouraging NPOs to conduct transactions via regulated financial channels; (v) absence of specific risk-based measures that apply to NPOs vulnerable to TF abuse (as there was no such assessment of risks conducted), therefore supervision and monitoring of such measures cannot exist; (vi) no mechanism for applying effective, proportionate and dissuasive sanctions for violations by NPOs exist other than sanctions for a failure to register BO information; (vii) shortcomings in the area of effective information gathering relating to NPOs and investigative capacity of the LEAs; (viii) no specific

points of contacts and procedures established aimed at responding to the international requests involving NPOs suspected of TF abuse (c.8.6). **R.8 is rated PC.**

Recommendation 9 – Financial institution secrecy laws

In the 4th round MER, Romania was rated C on former R.4.

Criterion 9.1 -

Access of authorities to information

Professional secrecy provisions do not apply to providing relevant information to the NOPCML (including its supervisory activities) (AML/CFT Law, Art. 33(4)).

Also, any confidentiality requirements placed on FIs supervised by the NBR must not hinder the discharge of supervisory tasks (GEO 99/2006 on credit institutions, Art. 113; Law 93/2009 on non-bank FIs, Art. 11; Law 209/2019 on payment services, Art. 236 and 237; and Law 210/2019 on the activity of issuing electronic money, Art. 110). Any confidentiality requirements placed on FIs supervised by the FSA must not hinder the discharge of supervisory tasks (GEO 93/2012 on the FSA, Art. 7¹(1); and FSA Regulation 13/2009, Art. 33(5) and Art. 37(3)¹⁰³). An obligation is also placed on all covered FIs to provide all requested information and documents to their respective supervisory authorities for AML/CFT purposes (AML/CFT Law, Art. 26(4) and Art. 27(3)).

As concerns the access of other competent authorities, including law enforcement, to confidential information, sectoral legislation ensures access to confidential information held by credit institutions (GEO 99/2006 on credit institutions, Art. 113 and 114) and non-bank FIs (Law 93/2009 on non-bank FIs, Art. 12). Otherwise, there is a general right of the prosecutor to have access to all necessary information during a criminal investigation (*urmarire penala*). Art. 306(6) in the CPC states that banking and professional secrecy (other than legal professional secrecy) are not enforceable against the prosecutor during a criminal investigation.

Sharing of information between authorities

The following competent authorities should not refuse to cooperate with competent authorities of other EU Member States due to secrecy or confidentiality provisions applicable to covered FIs, DNFBPs and VASPs: (i) judicial bodies (including prosecution and criminal investigation bodies); (ii) authorities and public institutions with regulatory, information and control responsibilities, including the NOPCML-FIU, financial, fiscal and customs authorities; and (iii) autonomous administrative authorities and institutions with sectoral and regulatory roles for covered FIs, DNFBPs and VASPs, such as the NBR, FSA and NGO (AML/CFT Law, Article 36¹(1) and (2)). Similar provisions are not in place in respect of competent authorities in third countries, and so it may be possible to refuse to cooperate based on secrecy or confidentiality requirements applicable to covered FIs.

No information has been provided on whether similar provisions are in place to allow information covered by secrecy or confidentiality requirements to be shared domestically amongst other competent authorities.

¹⁰³ To the extent that confidentiality requirements are established in legislation, these cannot be set aside by inferior regulatory acts.

Sharing of information between FIs

FIs are allowed to share information with other FIs belonging to the same group, to the extent that such branches and subsidiaries fully comply with group-wide AML/CFT policies and procedures. Information may also be exchanged with foreign FIs which impose equivalent AML/CFT requirements to those in Romania in case of a common customer or business relationship, where they are from the same “professional category” and subject to equivalent requirements on professional secrecy and data protection (AML/CFT Law, Art. 38(3)). Under R.13, it may be necessary for a respondent bank to provide CDD information on request to a foreign correspondent bank which does not meet these criteria. And under R.17, it may not be possible for a Romanian FI (third party that is relied upon) to disclose information and provide documentation on request to a foreign FI, DNFBP or VASP that is applying R.17 in a case where the latter has relied upon the former where the foreign FI, DNFBP or VASP does not meet the above criteria. Accordingly, confidentiality/secrecy provisions may inhibit the implementation of R.13 and R.17.

Weighting and Conclusion

The authorities have not demonstrated that banking and professional secrecy are not enforceable: (i) when sharing information with competent authorities domestically or outside EU Member States; or (ii) when FIs implement R.13 or R.17.

R.9 is rated PC.

Recommendation 10 – Customer due diligence

In the 4th round MER, Romania was rated PC on former R.5. There were a number of deficiencies identified, including: (i) mandatory language of legislation in providing for application of simplified CDD in certain cases; (ii) absence of requirement to determine whether the customer is acting on behalf of another person (for institutions other than those supervised by the NBR) and linked verification requirements; and (iii) interpretation of requirements to identify the beneficial owner and to take reasonable measures to verify identity.

Safekeeping and administration of cash – which is covered by the FATF definition of FI – is not subject to the AML/CFT Law

In line with practice in other EEA Member States, home country AML/CFT requirements are applied to business conducted remotely in Romania by EEA FIs operating within the scope of freedom to provide services. FIs situated outside the EEA are not allowed to offer financial services on a remote basis in Romania.

Criterion 10.1 - Covered FIs must not provide anonymous accounts, anonymous savings books, or anonymous safe deposit boxes, nor must they provide anonymous prepaid card payment services (AML/CFT Law, Art. 10(1)). Although there is no explicit prohibition on keeping accounts in obviously fictitious names, the AML/CFT Law clearly requires the identity of customers to be verified when establishing business relations (see c.10.3).

Criterion 10.2 – (a) Covered FIs are required to undertake CDD measures when establishing a business relationship (AML/CFT Law, Art. 13 (1)(a)).

(b) Covered FIs are required to undertake simplified CDD measures when carrying out an occasional transaction. In addition, standard measures must be applied when carrying out an occasional transaction at least equivalent in lei to EUR 15 000 - whether carried out in a single

transaction or several operations that seem to have a connection (AML/CFT Law, Art. 13(1)(b)(1)).

(c) Covered FIs are required to undertake CDD when carrying out an occasional transfer of funds as defined by Art. 3(9) of Regulation (EU) 2015/847 worth over EUR 1 000 (AML/CFT Law, Art. 13(1)(b)(2)). This constitutes a minor deficiency, as R.16 requires wire transfers amounting to EUR 1 000 also to be subject to CDD.

(d) Covered FIs are required to undertake CDD where there is suspicion of ML/TF, regardless of any exemptions or thresholds (AML/CFT Law, Art. 13(1)(d)).

(e) Covered FIs are required to undertake CDD when there are doubts about the veracity or adequacy of previously obtained customer identification data about the customer or the beneficial owner (AML/CFT Law, Art. 13(1)(e)).

Criterion 10.3 – Covered FIs are required to identify the customer and verify that customer’s identity based on documents, data and information obtained from “secure” and independent sources (AML/CFT Law, Art. 11(1)(a)). The term “secure” is considered to be synonymous with “reliable”. This requirement applies to permanent or occasional customers, and customers that are natural persons, legal persons, or legal arrangements without legal personality. In the case of covered FIs supervised by the NBR, verification must proceed on the basis of documents that are the most difficult to falsify or obtain illegally (NBR Regulation no. 2/2019 (NBR AML/CFT Regulation), Art. 11(1)). In the case of covered FIs supervised by the FSA, verification must proceed on the basis of credible and independent sources (FSA Regulation no. 13/2019 (FSA AML/CFT Regulation), Art. 25(2) (a)). The term “credible” is considered to be synonymous with reliable.

Criterion 10.4 – Covered FIs shall first verify that a person claiming to act on behalf of the customer is authorised to do so, in which case they shall identify and verify the identity of that person (AML/CFT Law, Art. 11(4)).

Criterion 10.5 – Covered FIs are required to identify the beneficial owner and take reasonable measures to verify their identity (AML/CFT Law, Art. 11 (1)(b)). BO means any individual who ultimately owns or controls the customer and/or the individual in the name of, or in whose interest, a transaction, operation, or activity is performed - directly or indirectly (AML/CFT Law, Art. 4 (1)). There is no explicit requirement to use reliable sources for the verification of BO in the AML/CFT Law, though this may be inferred from the requirement to take reasonable measures.

In the case of covered FIs supervised by the NBR, they must verify BO information provided by customers through: (i) “any method adapted to the situation” (NBR AML/CFT Regulation, Art. 12(1)); and (ii) observation of guidelines 4.26 to 4.28 of EBA Guidelines (EBA/GL/2021/02) on ML/TF Risk Factors Guidelines, including verifying customer identity and, where applicable, beneficial owner identity, based on reliable and independent information and data (NBR Instructions of 26.10.2021). In the case of covered FIs supervised by the FSA, they must verify BO information provided by customers through “any appropriate method adapted to the situation”. This is to be interpreted as choosing from documents least likely to be forged or obtained illegally, and, where not available, using credible and independent sources (FSA AML/CFT Regulation, Art. 22(6) to (8)). In the case of exchange offices, there is a requirement to verify identity based on a valid identity document or document attesting to the identity of a person that allows entry and/or stay in Romania (GD no. 1096/2022, Art. 13). Similar provisions do not apply to other FIs.

Criterion 10.6 – Covered FIs are required to assess the purpose and nature of a business relationship and to obtain additional information if necessary to support such an assessment (AML/CFT Law, Art. 11(1)(c)). There is no explicit requirement to understand purpose and nature in the AML/CFT Law.

In the case of covered FIs supervised by the NBR, they must understand the purpose and nature of a business relationship through observation of guidelines 4.38 to 4.39 of EBA Guidelines (EBA/GL/2021/02) on ML/TF Risk Factors Guidelines (NBR Instructions of 26.10.2021). In the case of covered FIs supervised by the FSA, there is also a requirement to understand the purpose and nature of a business relationship (FSA AML/CFT Regulation, Art. 25(2)(c)). Similar provisions do not apply to other FIs.

Criterion 10.7 – (a) Covered FIs are required to conduct ongoing monitoring of a business relationship. This shall include examination of transactions completed throughout the relationship in order to ensure that they are consistent with the information held regarding the customer, their business profile and their risk profile, including, where appropriate, the source of the funds (AML/CFT Law, Art. 11(1)(d)).

(b) Covered FIs are also required to ensure that documents, data or information held are kept up to date and relevant (AML/CFT Law, Art. 11(1)(d)). This should be done by undertaking reviews of existing records, particularly for categories of higher risk customers (NBR AML/CFT Regulation, Art. 13(1) to (3); FSA AML/CFT Regulation, Art 25(2)(d)); and NOPCML AML/CFT Rules, Art. 16 (4)(f)).

Criterion 10.8 – Covered FIs are required to understand the ownership and control structure of customers in the process of establishing BO (AML/CFT Law Art. 11(1)(b)). There is no specific obligation to understand the customer’s business under the AML/CFT Law, although covered FIs must examine the consistency of transactions undertaken with the customer’s business profile as part of on-going due diligence (AML/CFT Law, Art. 11(1)(d)).

In the case of covered FIs supervised by the NBR, they must understand the nature of the customer’s activities or business through observation of guidelines 4.38 to 4.39 of EBA Guidelines (EBA/GL/2021/02) on ML/TF Risk Factors Guidelines (NBR Instructions of 26.10.2021). As for covered FIs supervised by the FSA, information about the type and the nature of the work carried out should be obtained (FSA AML/CFT Regulation, Art. 22(2)(n)). Similar provisions do not apply to other FIs, including some MVTs operators and exchange offices, which are considered important sectors.

Criterion 10.9 – Specific data must be obtained when establishing a business relationship or conducting an occasional transaction with a customer that is a legal person, including: (i) data contained in the articles of incorporation (which in Romania includes the form and names of “administrators” (persons who manage and represent the company) and powers that regulate and bind; (ii) the registration certificate; and (iii) data on the person’s legal representative (AML/CFT Law, Art. 15(1)(b) and (c)). Verification of identity of a customer shall be conducted based on documents, data or information obtained from secure and independent sources (AML/CFT Law, Art. 11(1)(a)).

In the case of covered FIs that are supervised by the NBR, specific data must be obtained when establishing a business relationship or conducting an occasional transaction with a legal person or legal arrangement: (i) name; (ii) legal incorporation form; (iii) unique fiscal identification code and/or registration number from the trade registry or equivalent information for foreign legal persons; and (iv) registered office address and, if applicable, the address of its headquarters

(where core management is situated) (NBR AML/CFT Regulation, Art. 10(1)(a) to (d)) and Art.10(3)). Taken along with the requirements in the AML/CFT Law, covered FIs that are supervised by the NBR are not explicitly required to hold information on the principal place of business, if different to the address of the registered office or headquarters.

In the case of covered FIs that are supervised by the FSA, specific data must be obtained when establishing a business relationship or conducting an occasional transaction with a legal person or legal arrangement, e.g., a trust: (i) name; (ii) legal form; (iii) proof of existence; and (iv) registered office address and address of headquarters or, where applicable, principal place of business (FSA Regulation, Art. 22(1) and (2)). In addition, there is a requirement to request and verify the powers of the relevant persons holding a senior management position (FSA Regulation, Art. 22(1)(2)(g)).

In the case of covered FIs that are supervised by the NOPCML, information is included in deeds of incorporation and registration certificate (NOPCML AML/CFT Rules, Art. 18(1)(b)). Taken along with the requirements in the AML/CFT Law, covered FIs that are supervised by the NOPCML are not explicitly required to hold information on the principal place of business, if different to the address of the registered office.

In the case of covered FIs that are supervised by the NOPCML-FIU, there is a requirement to obtain a copy of the trust contract registration statement filed with the Fiscal Administration (NOPCML AML/CFT Rules, Art. 18(1)(d)). It is not specified what information is included in this registration statement.

Criterion 10.10 – Covered FIs are required to identify and take reasonable measures to verify the identity of beneficial owners of customers that are legal persons through the following information:

Type 1 - in the case of legal persons subject to registration in the Romanian trade register (all legal persons except associations and foundations) and foreign corporate entities: (i) natural persons who ultimately own or control by the direct or indirect exercise of ownership over a sufficient percentage of shares or voting rights, or by participation in the company's equity, including holding shares, or exercising control through other means; and (ii) if, after conducting CDD, and on condition that there are no grounds for suspicion, no person is identified in accordance with (i), or if there is any doubt that the person identified is the beneficial owner, natural persons occupying a senior management position, namely director(s), members of the board of directors/supervisory board, and directors with delegated powers from a director/board of directors (AML/CFT Law, Art. 4(2)(a)(1) and (2)).

Type 2 - in the case of associations, foundations, or federations thereof, beneficial owners will be identified and verified through the following information: (i) founders; (ii) members of the board of directors and persons with executive functions; (iii) categories of individuals in whose main interest the legal person has been constituted and, for associations, as the case may be, individuals in whose interest the association has been constituted; and (iv) any other individual who ultimately owns or controls the non-profit legal person (AML/CFT Law, Art. 4(2)(c)). These provisions follow the principles established under c.10.11, except that (iii) does not apply, as the case may be, to individual beneficiaries of foundations.

Type 3 - in the case of other types of legal persons which do not have "owners" in the same way that a company has, BO will be identified and verified through the following information: (i) group of persons in whose main interest the legal person has been constituted, if beneficiaries have not been identified; (ii) individuals benefiting from at least 25% of assets if beneficiaries have been

identified; (iii) individuals exercising control over 25% of the assets; and (iv) if, after conducting CDD, and on condition that there are no grounds for suspicion, no person is identified in accordance with (i) to (iii) or if there is any doubt that the person identified is the beneficial owner, natural persons managing the legal person (AML/CFT Law, Art. 4(2)(d)). Whilst these provisions do not follow the principles established under this criterion, it is not clear what type of legal persons they would apply to in practice, since all recognised forms of legal person are already covered by types 1 and 2 above.

Criterion 10.11 – For customers that are legal arrangements, covered FIs are required to identify and take reasonable measures to verify the identity of beneficial owners through the following information: (i) the settlor(s) (or equivalent), as well as persons designated to represent his/her interests in accordance with the law (i.e. the protector in the case of a trust); (ii) the trustee; (iii) the beneficiary(ies) or, if not yet known, the category of persons in whose main interest the legal arrangement is established; and (iv) any other natural person exercising ultimate control over the legal arrangement (AML/CFT Law, Art. 4(2)(b)(1) to (4)).

Criterion 10.12 – The following measures should be undertaken by a covered FI in relation to the beneficiary of a life insurance policy or other insurance which includes an investment component as soon as the beneficiary is identified or designated: (i) where identified by name - applying CDD (and not just taking the name of the person); and (ii) where designated by characteristics or category or by other means - obtaining sufficient information that ensures that, at the time of payment, it will be able to establish the beneficiary's identity. These measures shall be adopted at the latest at the time of payment or at the time of assignment to a third party, in whole or in part, of the policy (AML/CFT Law, Art. 13(4) and (5)). For both of the above cases, there is a requirement to verify identity at the time of pay-out (FSA AML/CFT Regulation, Art. 25(8)).

Criterion 10.13 – Insurance companies are required to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether EDD measures are applicable (FSA AML/CFT Regulation, Art. 25(6) and Annex 2). In a high-risk (rather than higher risk) situation, where EDD is required, it may be appropriate to identify and verify the identity of the beneficial owner of that beneficiary (FSA AML/CFT Regulation, Annex 2, Part II). However, there is no explicit requirement to do so, including at time of pay-out.

Criterion 10.14 and 10.15 – Covered FIs are required to verify the identity of the customer and beneficial owner before concluding an occasional transaction or establishing a business relationship (AML/CFT Law, Art. 11(8)). The AML/CFT Law does not permit completion of verification after the establishment of the business relationship.

Criterion 10.16 – Transitional provisions required covered FIs to comply with their obligations under the AML/CFT Law within 180 days from the date of its entry into force (which was 14 July 2019) (AML/CFT Law, Art. 60(3)) – and so are comfortably within the assessment period. Whilst the timing of such measures depends on risk and when customer circumstances change, and not specifically when CDD measures have previously been undertaken and the adequacy of the data obtained, the period given is a shorter than accommodated under the Standard. It is not clearly stated that CDD measures applied should be based on both risk and materiality.

In the case of covered FIs that are supervised by the NBR, the timing of application of CDD to existing customers is different: as soon as possible and not later than 18 months after the governing body approves the revised norms (NBR AML/CFT Regulation, Art. 30). The extent of measures to be applied should be based on risk and not also materiality. In the case of covered FIs that are supervised by the FSA, the extent of CDD to be applied to existing clients must be

based on materiality and risk evaluation, and timing of such measures must consider when the previous CDD measures have been undertaken and whether they continue to be relevant (FSA AML/CFT Regulation, Art. 22(4)). Similar provisions do not apply to other FIs.

Criterion 10.17 – Covered FIs are required to apply EDD measures in all situations, which by their nature, may present an increased risk of ML/TF (AML/CFT Law, Art. 17(1)). The AML/CFT law lists factors for potential high-risk situations (risk factors related to the customer, risk factors related to products, services, transactions or distribution channels, and geographical risk factors) (AML/CFT Law, Art. 17(14)). This list is non-exhaustive. There are some higher ML/TF situations where EDD is mandatory: (i) business relationships and transactions involving persons from countries which do not apply, or do not apply sufficiently, international AML/CFT standards; (ii) cross-border correspondent banking relationships; (iii) transactions or business relationships with PEPs; (iv) persons established in high-risk countries as designated by the EC; and (v) in cases specified in sectoral regulations or instructions issued by the competent authorities.

Covered FIs that are supervised by the FSA must take into account factors that may contribute to higher risk (FSA Regulation 13/2018, Art. 25(6)). These are listed under annexes 2 to 4 covering, respectively, life insurance companies and intermediaries, financial investment services companies, and investment funds.

Criterion 10.18 – Covered FIs may apply simplified CDD measures exclusively to low-risk (rather than lower risk) customers (AML/CFT Law, Art. 16(1)) following a global assessment of all identified risks, including prescribed variables (AML/CFT Law, Art. 11(6)) and the following factors: (i) customer risk factors, e.g. where the customer is a public company listed on a stock exchange; (ii) risk factors for products, services, transactions, or distribution channels, e.g. value of insurance premia; and (iii) geographical risk factors (AML/CFT Law Art.16(2)). Before applying simplified measures, covered FIs have an obligation to ensure that the business relationship or the occasional transaction presents a low degree of risk, determined at least based on factors listed under Art. 16(2). The effect of this is that it is not possible to apply simplified CDD if higher risk scenarios apply. Moreover, covered FIs shall ensure that information obtained demonstrates that the evaluation is justified, and sufficient information is obtained to be able to identify unusual or suspicious transactions (AML/CFT Law, Art. 16(3)). Where simplified measures are applied, then these should be appropriate to ML/TF risk (AML/CFT Law, Art. 11(2)). Covered FIs may not apply simplified CDD in cases where ML/TF is suspected (AML/CFT Law, Art. 13(1)(d)).

Criterion 10.19 – (a) Covered FIs are prohibited from opening an account, initiating, or continuing a business relationship or carrying out an occasional transaction if they are unable to undertake CDD measures (AML/CFT Law, Article 11(9)). In the case of covered FIs supervised by the NBR, it is stated that this prohibition shall include cases where it is not possible to establish the legitimacy of the purpose and the nature of the business relationship or properly manage the risk of ML and TF (NBR AML/CFT Regulation, Art. 18(1)). For existing business relationships that, by their nature, cannot be immediately terminated by covered persons supervised by the NBR, ML/TF risk must be properly managed and new transactions must not be initiated (NBR AML/CFT Regulation, Art. 18(2)). This clarification is considered to be in line with the criterion which does not specify the timeframe for termination.

(b) Where covered FIs are unable to comply with relevant CDD measures, they are required to file a suspicious transaction report whenever there are grounds for suspicion (AML/CFT Law, Art. 11(9)).

Criterion 10.20 – In cases where covered FIs form suspicion of ML/TF and reasonably believe that performing CDD measures will “tip-off” the customer, covered FIs that are supervised by the FSA need not pursue the CDD process (FSA AML/CFT Regulation, Art. 25(5)). Similar provisions do not apply to other FIs.

Weighting and Conclusion

The key elements of CDD are in place in Romania, and there remain only minor deficiencies in the AML/CFT Law and supporting regulations. Whilst there are some shortcomings in the application of CDD to legal persons and legal arrangements (c.10.9 and c.10.10), these are not weighted heavily overall rating since they affect only a small proportion of customer relationships. Also, whilst there are shortcomings in the application of CDD to covered FIs supervised by the NOPCML (c.10.5, c.10.6 and c.10.8), again these apply to only a small proportion of customer relationships. Shortcomings noted for life insurance (c.10.13) apply only to a small sector, and those linked to legacy accounts (c.10.16) have expired. The gap in the application of preventive measures to the safekeeping and administration of cash is minor. **R.10 is rated LC.**

Recommendation 11 – Record-keeping

In the 4th round MER, Romania was rated LC on former R.10. There was no explicit requirement for covered FIs to maintain business correspondence for at least five years following the termination of an account or business relationship and there were only limited requirements for ensuring that all customer and transaction records were available on a timely basis to domestic authorities.

The introduction to R.10 identifies an activity to which the AML/CFT Law does not apply.

Criterion 11.1 - Covered FIs are required to maintain records of transactions, consisting of account statements or business correspondence. They must do so for a period of five years starting with: (i) the date of termination of the business relationship with the client; or (ii) from the date of an occasional transaction (AML/CFT Law, Art. 21(2)). In the case of (i), this period is longer than required under the criterion. The law does not distinguish between domestic and international transactions.

Criterion 11.2 – Records obtained through CDD measures, account records and business correspondence, and results of any analyses undertaken in respect of a customer, must be kept by covered FIs for five years from the moment of terminating the business relationship or the conclusion of an occasional transaction (AML/CFT Law, Art. 21 (1) and (2)).

Criterion 11.3 – There is no explicit requirement for keeping transaction records that are sufficient to permit the reconstruction of individual transactions. Instead, there is requirement to maintain records that are necessary to “identify transactions”. The authorities have explained that this obligation is intended to require covered FIs to keep documents necessary to reconstruct a transaction and complements requirements in place in other legislation requiring transactions to be recorded, including parties involved and quantitative and value data (Accounting Law 82/1991, Art. 6 and O.M.F.P. no. 2634/2015, point 2 of Annex no. 1). The documents can be original or copies capable of being admitted in court proceedings (AML/CFT Law, Art. 21 (2)).

Criterion 11.4 – Covered FIs are required to respond to requests from the NOPCML-FIU within 15 days from receipt of such requests, or shorter period as may be requested. The effect of this requirement is to ensure that information and transactions records can be made swiftly to all competent authorities with appropriate authority (though not expressly stated).

Weighting and Conclusion

The gap in the application of preventive measures to the safekeeping and administration of cash and shortcoming noted above are minor **R.11 is rated LC**.

Recommendation 12 – Politically exposed persons

In the 4th round MER, Romania was rated PC on former R.6. The definition of PEP did not include “important political party officials” and EDD requirements did not extend to foreign PEPs resident in Romania. No requirement was in place to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs.

The introduction to R.10 identifies an activity to which the AML/CFT Law does not apply.

Criterion 12.1 - The term “publicly exposed person” (PEP) is defined in line with the FATF Glossary definition (AML/CFT Law, Art. 3((1) and 2)).

One year from the date on which a person has ceased to hold an important public function, a covered FI is not required to treat that person as a PEP (AML/CFT Law, Art. 3(6)) and thereafter is required to apply enhanced measures based on risk. In contrast, the FATF Recommendations do not specify a period during which an individual must remain defined as a PEP after relinquishing their function. This point is partially addressed through inclusion of a relationship with a former PEP as an indicator of potentially higher risk which must be subject to application of EDD measures (AML/CFT Law, Art. 17(1)(c)). However, EDD measures are not required to be applied to former PEPs that continue to present a standard or lower PEP risk – where PEP risk has not yet been fully extinguished. This is not in line with R.10 and affects the overall rating.

(a) Covered FIs are required to have adequate risk management systems, including risk-based procedures, to determine whether a customer or a beneficial owner of a customer is a PEP (AML/CFT Law, Art. 11(3)).

(b) Covered FIs are required to obtain approval from senior management for establishing or continuing such business relationships (AML/CFT Law, Art. 17(9)(a)).

(c) Covered FIs are required to adopt appropriate (rather than reasonable) measures to establish the source of wealth and of funds of the customer and the BO (AML/CFT Law, Art. 17(9)(b)).

(d) Covered FIs are required to perform a continuous and permanently increased monitoring of such business relationships (AML/CFT Law, Art. 17(9)(c)).

Criterion 12.2 – The same provisions that apply to foreign PEPs also apply to domestic PEPs and directors, deputy directors and members of the board of directors or members with equivalent function within an international organisation (AML/CFT Law, Art. 3(1) and (2)). This places a higher burden on covered FIs, since the standard calls only for reasonable measures to be applied to determine whether a customer or beneficial owner thereof is a domestic PEP or person entrusted with a prominent function by an international organisation, and EDD measures to be applied to all PEPs.

Criterion 12.3 – PEP requirements apply also to family members of PEPs and persons publicly known as close associates of PEPs (having close business relations with PEPs) (AML/CFT Law, Art. 17(10)). Family member is defined as being the spouse (or person considered to be equivalent), parent, children, and their spouses (or person considered to be equivalent (AML/CFT Law, Art.3(4)) and this does not include siblings and stepchildren. A close associate is a natural person who: (i) holds joint BO of a legal person or legal arrangement with a PEP; (ii) is the sole

beneficial owner of a legal person or legal arrangement set up for the benefit of a PEP; or (iii) has any other privileged/close business relationship with PEP (AML/CFT Law, Art. 3(5)). This does not include persons that are closely connected to a PEP socially or politically.

Criterion 12.4 – Covered FIs are required to take reasonable measures to determine whether the beneficiaries and/or, where required, the beneficial owner of the beneficiary, are PEPs, at the latest at the time of payment or at the time of the total or partial assignment of the insurance policy. Where increased ML/TF risks are identified, then there is a requirement to inform senior management and to conduct enhanced ongoing monitoring of the whole business relationship (AML/CFT Law, Art. 17(11), (12) and (13)). Additionally, in such cases, if there are “clear unusual elements”, insurance undertakings must consider submitting an STR to the NOPCML-FIU (FSA AML Regulation, Art. 25(8), Art. 27 (13), Annex no. 2 (10) (c)). This latter requirement is not wholly in line with the criterion since the requirement to consider making a report should be based purely on higher risk (which may take other factors into account than unusual elements).

Weighting and Conclusion

One year from the date on which a person has ceased to hold an important public function, a covered FI is not required to treat that person as a PEP, unless there is a higher residual risk. Definitions for close associate and family member of PEPs are considered to be too narrow. Taking account of the particular risks presented in Romania by corruption, these deficiencies have been more heavily weighted. The gap in the application of preventive measures to the safekeeping and administration of cash is minor. **R.12 is rated PC.**

Recommendation 13 – Correspondent banking

In the 4th round MER, Romania was rated LC on former R.7. The requirements concerning cross-border correspondent relationship applied only to non-EU/EEA countries. Measures required for establishment of cross-border correspondent relationships did not explicitly require determining whether the respondent institution had been subject to investigation or regulatory actions, and ascertaining that the respondent institution’s AML/CFT controls were adequate and effective.

Criterion 13.1 – A correspondent relationship is defined as: (i) providing of banking services by a credit institution as a correspondent for another credit institution as respondent; and (ii) the relationship between a credit institution and a FI, or between two FIs, for providing similar services, including relations established for transactions with securities or transfers of funds (AML/CFT Law, Art. 2 (d)).

(a) In the case of cross-border correspondent relations with respondent institutions from other Member States and third countries, covered correspondent FIs, in addition to the standard CDD, are required to: (i) fully understand the nature of the respondent’s business and to determine, based on public information, its reputation, including whether it was the subject of any ML/TF investigation or subsequent regulatory action; and (ii) obtain sufficient information about the quality of supervision (AML/CFT Law, Art.17(7)(a) and (b)). The requirement to obtain sufficient information regarding quality of supervision can automatically be considered as fulfilled for respondents in Member States (AML/CFT Law, Art. 17(8)), as it is presumed that the level of supervision will be equivalent.

(b) In the case of cross-border correspondent relations with respondent institutions from third countries, covered correspondent FIs are required to assess the mechanisms implemented by the respondent institution for preventing and combating ML and TF, and to ensure that the

mechanisms are adequate and effective (AML/CFT Law, Art. 17(7)(c) and 17(8)). The requirement can automatically be considered as fulfilled for respondents FIs in Member States.

(c) In the case of cross-border correspondent relations with respondent institutions from other Member States and third countries, covered correspondent FIs are required to obtain the approval of senior management to establish a correspondent relationship (AML/CFT Law, Art. 17(7)(d)).

(d) In the case of cross-border correspondent relations with respondent institutions from other Member States and third countries, covered correspondent FIs are required to establish, based on documents, the responsibilities of each party (AML/CFT Law, Art. 17(7)(e)).

Criterion 13.2 – For correspondent accounts directly accessible to customers, covered correspondent FIs are required to ensure that correspondent institutions in third countries: (i) apply on an ongoing basis CDD measures for those customers; and (ii) are able to provide to the correspondent institution, on request, the information obtained through the application of those measures (AML/CFT Law, Art. 17(7)(f) and 17(8)). The requirement can automatically be considered as fulfilled for respondent credit and FIs in Member States.

Criterion 13.3 – Covered FIs are forbidden to establish or continue a correspondent relationship with a shell bank and shall take appropriate measures to ensure that they do not enter a correspondent relationship or continue such a relationship with a covered FI which allows shell banks to use its accounts (AML/CFT Law, Art. 10(4) and (5)).

Weighting and Conclusion

Two correspondent banking requirements (assessing AML/CFT controls implemented by the respondent institution and requirements concerning payable through accounts) are automatically fulfilled by respondents in EU/EEA countries. These are not considered minor deficiencies considering that most respondents are based in EU/EEA Member States. **R.13 is rated PC.**

Recommendation 14 – Money or value transfer services

In the 4th round MER, Romania was rated PC on SRVI. The Post Office had been inappropriately appointed as an SRB (also without legal backing) and there was no licensing/registration requirements for the Post Office or agents. It had not been demonstrated that the Post Office was subject to applicable AML/CFT requirements and that there was a system in place for monitoring AML/CFT compliance.

Criterion 14.1 - MVTS services may be provided by: (i) credit institutions; (ii) EMIs within the meaning of legislation regarding electronic money issuance; (iii) PIs; and (iv) post office giro institutions (Law no. 209/2019 on payment services, Art. 2). These types of entities are collectively referred to as PSPs.

Any entity that intends to provide MVTS services as a PI or EMI must be authorised by the NBR (Law no. 209/2019 on payment services, Art. 9(1)), Law no. 210/2019 on the issuing of electronic money, Art. 7(1) and NRB Regulation no 4/2019 Art 92 (1)). Credit institutions provide payment services under their general licence (OUG no. 99/2006, Art. 18(1)(d)).

Post office giro institutions are authorised by the National Authority for Administration and Regulation in Communications (ANCOM). Authorisation does not require an explicit decision by

ANCOM; rather it follows notification of an intention to provide postal services (GEO no. 13/2013, Art. 5(1)).

A PI or EMI authorised in another Member State may provide MVTs services on Romanian territory through branches or agents/distributors, or directly, when covered by its home authorisation - based on a notification sent to the NBR by the competent authority of the home Member State (Law no. 209/2019, Art. 56 and Law no. 210/2019, Art. 60 (1), 62).

Criterion 14.2 – Any entity that is not a PSP is forbidden to perform MVTs services (Law no. 209/2019 on payment services, Art. 8) and unauthorised activity may be punished with imprisonment from 6 months up to 3 years, or with a fine (Law no. 209/2019 on payment services, Art. 235(1)). This means that a sufficient range of sanctions can be applied proportionately to greater or lesser breaches. The authorities have not explained how, generally, they take joint action to identify and sanction non-authorised business, including MVTs services. Notwithstanding the presence of limited hawala activities, sanctions have not been applied to MVTs for conducting unauthorised business.

Criterion 14.3 – Credit institutions, EMIs and PIs are subject to monitoring by the NBR (AML/CFT Law, Art. 27(1)). This includes agents/distributors of EMIs and PIs authorised in other Member States for compliance with host country requirements (AML/CFT Law, Art. 27(16)).

The NOPCML supervises post office giro institutions that provide payment services (AML/CFT Law, Art. 26(1)(d)). In addition, the NOPCML is responsible for supervision of compliance with Regulation (EU) 2015/847 by postal service providers (AML/CFT Law, Art. 29(1)). Postal service providers are also supervised by the NBR for prudential purposes (operational and security risks and incident reporting, authentication, and other matters for providing payment services) (Law no. 209/2019 on payment services, Art. 223(1)).

Thus, all MVTs operators are subject to monitoring for AML/CFT compliance.

Criterion 14.4 – PIs that are Romanian legal persons are allowed to provide MVT services through agents (in Romania and abroad) only after filing an application with the NBR and subsequent registration in a public register (Law no. 209/2019, Art. 48 to Art. 53. Art. 61 to Art. 66 and Art. 68). A similar provision applies to EMIs (Law no. 210/2019, Art. 51 and 64(2)).

Credit institutions that are Romanian legal persons and branches of third country credit institutions established in Romania have an obligation to provide data on banking agents (in Romania and abroad) to the NBR (NBR Regulation no. 5/2013, Art. 2(1) and (2)). The list of agents must be updated whenever there is a change to the data and information initially entered. Based on the list sent by credit institutions, banking agents shall be registered in a register kept by the NBR and permanently updated. (NBR Regulation no. 5/2013, Art.242¹).

No requirements exist for agents of post office giro institutions, and it has not been explained whether any operate through agents. However, postal operations are limited.

Institutions authorised in other Member States that carry on business in Romania through a physical presence must disclose agents to competent authorities in those other states.

Criterion 14.5 – Covered PSPs are required to apply policies, procedures, and training at group level, including at the level of their agents (AML/CFT Law, Art. 24(7)). Covered PSPs that are supervised by the NBR must ensure that CDD measures are effectively implemented and properly applied, including at group level (NBR AML/CFT Regulation, Art. 6(1)). Covered PSPs supervised by the NBR are also required to monitor the training of agents (NBR AML/CFT Regulation, Article

22(3)). It has not been explained whether similar requirements are in place for post office giro institutions supervised by the NOPCML, but operations are limited.

Weighting and Conclusion

The authorities have not explained how they take joint action to identify and sanction non-authorized MVTS operators. Given that the MVTS sector is weighted as “most important” and the presence of hawala activities, this omission is not considered minor.

Whilst there are gaps in requirements for agents of post office giro institutions (c.14.4 and c.14.5), these are found in a non-material sector and so not weighted heavily. **R.14 is rated PC.**

Recommendation 15 – New technologies

In the 4th round MER, Romania was rated C on former R.8.

Amended R.15 focusses on assessing risks related to the use of new technologies, in general, and imposes a comprehensive set of requirements in relation to VASPs. The FATF revised R.15 in October 2018 and its interpretative note in June 2019 to require countries to apply preventive and other measures to VAs and VASPs. In October 2019, the FATF agreed on the corresponding revision to its assessment Methodology and began assessing countries for compliance with these requirements immediately.

The introduction to R.10 identifies an activity to which the AML/CFT Law does not apply.

The following VASPs are subject to the AML/CFT Law and required to be authorised or registered: (i) providers of exchange services between VAs and fiat currencies; and (ii) providers of digital wallets. These are referred to hereafter as covered VASPs. There is no regulation of: (i) exchange between one or more forms of VAs; (ii) transfers of VAs; (iii) safe-keeping and/or administration of VAs (except for provision of wallets) or instruments enabling control over VAs; or (iv) participation in, and provision of financial services related to, an issue’s offer and/or sale of a VA.

Criterion 15.1 - The NOPCML is the coordinating authority for the assessment of risks of ML and TF at the national level. Risk assessments must be updated at least every 4 years at sectoral and national level (AML/CFT Law, Art. 1(3) and (6)).

Whilst the NRA considers risks associated with increasing digitisation, adoption of FinTech/new technology solutions, and promotion of new distribution mechanisms (remote access to services posing risks of identity theft), and sectoral risk assessments discuss the use of new payment methods (e-wallets, e-commerce), the NRA does not include a separate, comprehensive analysis of ML/TF risks that may arise in relation to the development of new products and new business practices. Similarly, the sectoral risk assessment produced by the NBR highlights the risks presented by the fast pace of development of new products and delivery channels and use of fintech but does not set out how those risks rise or their extent. The analysis of ML/TF risk linked to the use of VAs is considered under c.15.3 below.

There is no specific provision in the AML/CFT Law that requires covered FIs to identify and assess ML/TF risks at business level that may arise specifically due to the development of new products and new business practices and the use of new or developing technologies for both new and pre-existing products. However, as part of a requirement to conduct a BRA, covered FIs that are supervised by the NBR and NOPCML are required to take certain risk factors into account (NBR AML/CFT Regulation, Art. 3(1)(2) and NOPCML AML/CFT Rules, Art. 13(c) and Art. 14(1)). These include areas addressed under this criterion (AML/CFT Law, Art. 17(14)(2)(e)). FIs supervised

by the FSA are also required to periodically identify, assess, and document the ML/TF risks that may arise in relation to areas addressed under this criterion, except there is no explicit requirement to identify and assess ML/TF risks that may arise from the use of developing technology (FSA AML/CFT Regulation, Art. 13(4)).

Criterion 15.2 – (a) There is no explicit requirement in the AML/CFT Law for FIs to conduct risk assessments prior to the launch or use of new products, practices, and the use of new or developing technologies.

However, the risk and compliance functions of covered FIs supervised by the NBR should be involved in the approval of new products or significant changes to existing products, processes and systems (but not explicitly business practices or technology) in line with a product approval policy (NBR Regulation no. 5/2013 on prudential requirements, Art. 34(7)). The development of this approval policy and the adoption of the decision to launch a new activity shall be done taking into consideration the opinion of the compliance function (NBR Regulation 5/2013 on prudential requirements, Art. 34(8)). A risk assessment mandated by the FSA must be conducted prior to the launch of any new product, business practice, or technology (FSA AML/CFT Regulation, Art. 13(4), Annex no. 1 G b) (iii)).

(b) Covered FIs supervised by the FSA are required to take appropriate measures to mitigate risks (FSA AML/CFT Regulation, Art. 13(4)). There is no explicit requirement for other covered FIs to take appropriate measures to manage and mitigate risks prior to the launch or use of new products, practices or the use of new or developing technologies. However, covered FIs supervised by the NBR must establish policies and procedures for managing and mitigating risk linked to products (NBR AML/CFT Regulation, Art. 4 (2)(b) and (d) and Art. 5(2)(f)).

Criterion 15.3 – (a) The country's (draft) NRA includes a section on providers of exchange services between VAs and fiat currencies, and providers of digital wallets. It does not extend to VASPs more generally, analyse the extent to which VAs are being used in Romania, e.g., by OCGs, or analyse threats linked to the current level of activities undertaken in the country, such as through ATMs. The NRA does not consider the extent to which there are resources in place at all relevant competent authorities to deal with risk.

(b) The authorities have not summarised measures taken to address risks identified, other than to explain recent changes to the AML/CFT Law, which, inter alia, place notification requirements on VASPs and extend preventive measures to the sector.

(c) C.1.10 and c.10.11 apply also to covered VASPs.

Criterion 15.4 - (a) Covered VASPs must be authorised (in the case of legal persons created under Romanian law) or registered (which may apply in the case of legal persons authorised or registered elsewhere within the EEA) by a Commission of the MoF – based on a technical approval provided by the Romanian Digitisation Authority (AML/CFT Law, Art. 30¹(1) and (3)). Accordingly, applications for authorisation/registration may be made only by: (i) VASPs that are created under Romanian legislation; or (ii) VASPs that are legal persons already authorised or registered in an EEA Member State. Procedures to be followed for authorisation or registration have not yet been adopted, the effect of which is that authorisation/registration requirements are not enforceable. However, there is a complementary obligation to report the commencement, suspension, or termination of a covered VASP activity to the NOPCML within 15 days (AML/CFT Law, Art. 30²), the effect of which is to create a register of covered VASPs.

b) The NOPCML has an obligation to verify if the persons who hold a management position in, or are the beneficial owners of, a covered VASP are “suitable and competent” persons capable of protecting those entities against their abusive use for criminal purposes (AML/CFT Law, Art. 31(2)). This obligation extends also to associates of criminals. However, the NOPCML is not given powers to address this obligation through the AML/CFT Law, relying instead on general supervisory powers that allow them to conduct ongoing assessments of reputation and integrity.

Criterion 15.5 – Following adoption of procedures to be followed for authorisation or registration, it will become a criminal offence to conduct covered VA services without authorisation - punishable according to the CC (AML/CFT Law, Art. 47(2)). An offence can be punished by three months to one year of imprisonment or a fine. The NOPCML will have responsibility for identifying illegal activity but has not explained what action it will take to identify such activity. In addition, providers of electronic communications networks and services (providers of internet services, fixed or mobile telephony services, providers of radio or TV services and cable services) will be obliged to comply with decisions of the Commission of the MoF on restricting access to websites: (i) of unauthorised providers of exchange services between VAs and fiat currencies and digital wallet services in Romania, in a Member State of the EEA or the Swiss Confederation; and (ii) advertising and publicising such unauthorised services.

Criterion 15.6 – (a) The NOPCML is responsible for the supervision of covered VASPs with the AML/CFT Law (AML/CFT Law, Art. 26(1)(d)). It is also responsible for supervision of implementation of TFS obligations (GEO no. 202/2008, Art. 17(1)).

Covered VASPs are subject to monitoring in proportion to the identification and assessment of risk indicators established in accordance with internal procedures (NOPCML AML/CFT Rules, Art. 26(3)). Legislation requires all AML/CFT supervisors, when applying a RBA to AML/CFT supervision, to clearly understand ML/FT risks, have access to relevant information, and base supervisory activities around risk profiles prepared for covered FIs (which should be periodically reviewed) (AML/CFT Law, Art. 26(8)). As noted under c.26.5, the frequency and intensity of supervisory effort does not take account of the degree of discretion allowed under the RBA.

(b) Covered VASPs have to make data and information available to their supervisor to support supervisory duties. They may take photocopies of the verified documents (AML/CFT Law, Art. 26(4)). Supervisors also have a power to require measures to be taken (AML/CFT Law, Art. 26(5)). Inspections may be carried out at the premises of the NOPCML, covered VASP or as otherwise agreed (AML/CFT Law, Art. 26 and NOPCML AML/CFT Rules, Art. 27 and following). The NOPCML may use the same powers that are available under the AML/CFT Law to supervise implementation of TFS obligations (GEO no. 202/2008, Art. 17(1)).

The same sanctions apply to covered VASPs as to covered FIs – see the description above under c.27.4 below.

Criterion 15.7 - In carrying out its functions (FIU and supervisor), the NOPCML must adopt a number of regulations/guidelines (AML/CFT Law, Art. 39(3)(k)). In addition, it is expected to issue instructions, recommendations, and points of view to ensure the effective implementation of obligations in the AML/CFT Law (AML/CFT Law, Art. 39(3)(j)). The NOPCML-FIU is expected to provide feedback to covered VASPs on the effectiveness of, and actions taken by, the NOPCML, following reports that it receives (AML/CFT Law, Art. 34(9), NOPCML Orders No. 6/2021 and No. 91/2022)). Details are provided under R.34. The authorities have identified two general documents that make reference to VASPs, but not summarised specific VASP content. No additional regulations or guidelines linked to VAs have been provided to covered VASPs.

In 2022, two training sessions have been run for VASPs, outlining requirements in the AML/CFT Law, including reporting, and in respect of TFS. The second training session also covered the assessment and identification of VA risks. Given the number of known VASPs, numbers attending were acceptable.

Criterion 15.8 - (a) The NOPCML is authorised to impose administrative sanctions for failure to comply with the AML/CFT Law (AML/CFT Law, Art. 43). In the case of a breach, a warning or fine must be applied (AML/CFT Law, Art. 43(2) to (5)). Supplementary non-financial sanctions may also be applied (AML/CFT Law, Art. 44(1)). The range of fines that may be applied for TFS requirements (linked to R.7 and R.8) do not appear to be proportionate. See the description under R.35 below, which highlights that the range of sanctions for dealing with failure to report suspicion of ML/TF is not sufficiently proportionate, since it is not directly subject to a criminal sanction.

(b) Sanctions and other measures may be applied to members of the governing body and other natural persons who are responsible for the violation of the law (AML/CFT Law, Art. 43(3)). A temporary prohibition to exercise management functions within a covered VASP may also be imposed against any person with managerial responsibilities or against any other natural person declared responsible for a violation (AML/CFT Law, Art. 44(1)). See the description under R.35 below.

Criterion 15.9 - The same requirements that apply to covered FIs also apply to covered VASPs, except as follows: (i) there is no prohibition on keeping anonymous accounts or accounts in obviously fictitious names (c.10.1) (AML/CFT Law, Art. 10(1)); (ii) provisions placed on correspondent institutions do not apply (R.13); (iii) there is no requirement for the compliance officer to be appointed at management level (c.18.1(a)) (AML/CFT Law, Art. 23(2)); (iv) there is no direct requirement to apply appropriate standards when recruiting staff, though those with responsibility in the application of the AML/CFT Law can be hired only after consideration of their suitability and competence (see c.23.2); and (v) the obligation to put in place an independent audit function is not absolute (see c.23.2)). Accordingly, many of the deficiencies observed for R.10 to R.21 apply also to VASPs.

(a) The occasional transaction designated threshold above which VASPs are required to conduct CDD is the equivalent in lei of EUR 15 000, and not EUR 1 000 as required under the criterion.

(b) No provisions are in place to deal with VA transfers.

Criterion 15.10 - TFS resulting from UNSCRs are binding in domestic law on covered VASPs in the same way as for covered FIs and covered DNFBPs (GEO no. 202/2008, Art. 3(1)). See shortcoming under R.6 and R.7.

Criterion 15.11 - One of the objectives of the NOPCML is to exchange information on its own initiative or upon request, on the basis of reciprocity, with institutions having similar functions or with other competent authorities (AML/CFT Law, Art. 39(3)(q)). In this respect, the NOPCML has a legal basis for exchanging information, including about VAs, with other FIUs and with other foreign competent authorities to prevent and combat ML/TF (AML/CFT Law, Art. 36(1)). This gateway also allows information to be exchanged by the NOPCML in its capacity as VASP supervisor, e.g., fit, and proper rules of beneficial owners and board members. In support of this, supervisory authorities may conclude cooperation agreements which provide for cooperation and exchange of information with competent authorities of third countries with similar responsibilities (AML/CFT Law, Art. 38¹(6)). Cooperation is not contingent upon such a

cooperation agreement being in place and is not affected by status or differences in the nomenclature or status of covered VASPs.

The NOPCML also has a power to cooperate with the competent authority of another EU Member State in which a FI established in Romania conducts its business - in order to ensure effective supervision of compliance with the requirements of the AML/CFT Law (AML/CFT Law, Art. 26(7)).

The analyses of R.37 to R.40 are relevant.

Weighting and Conclusion

The authorities have taken some important initial steps towards regulating and supervising VASPs. Nevertheless, a full assessment of risks presented by VA activities and VASPs has not yet been conducted and the scope of the application of VASP requirements is limited to exchanges and wallet holders. Whilst the NOPCML is required to prevent criminals or their associates from holding, or being the beneficial owner of, a significant or controlling interest in a VASP, or holding a management function, it does not have explicit powers to do so and has not explained what action will be taken to identify illegal activity. Moreover, there are some important gaps in the application of the AML/CFT Act to VASPs which include failure to explicitly prohibit the use of anonymous accounts. The threshold over which requirements apply to occasional attractions is also too high EUR 15 000 (rather than EUR 1 000) and there are no provisions in place to deal with VA transfers (so called “travel rule”).

The NRA does not include a separate, comprehensive analysis of ML/TF risks that may arise in relation to the development of new products and new business practices, and there are gaps in requirements placed on FIs to identify and assess ML/TF risks that may arise due to the development of new products and new business practices and the use of new or developing technologies for both new and pre-existing products prior to launch and to manage and mitigate those risks.

The gap in the application of preventive measures to the safekeeping and administration of cash (relevant to c.15.1 and c.15.2) is minor.

R.15 is rated PC.

Recommendation 16 – Wire transfers

In the 4th round MER, Romania was rated LC on SR.VII since the implementation and effectiveness of the EU Regulation could not be assessed.

Regulation (EU) 2015/847 on information accompanying transfers of funds is directly applicable to all Member States. With respect to R.16, and consistent with the FATF Recommendations, domestic wire transfers refer to transfers entirely within the borders of the EEA, while cross-border wire transfers represent transfers made to/from third countries.

Criterion 16.1 – (a) All cross-border wire transfers exceeding EUR 1 000 should be accompanied by the following information (but not transfers of exactly EUR 1 000 as provided for in the standard) on the originator: (i) the name of the originator; (ii) the originator’s payment account number; and (iii) the originator’s address, official personal document number, customer identification number, or date and place of birth. In case of a wire transfer not made from a payment account, the ordering FI shall ensure that the transfer is accompanied by a unique transaction identifier (Regulation (EU) 2015/847 Art. 4(1) and (3)). The ordering FI has the

obligation to verify the accuracy of the originator information on the basis of documents, data or information obtained from a reliable and independent source before transferring funds (Regulation (EU) 2015/847 Art. 4(4)).

(b) All cross-border wire transfers exceeding EUR 1 000 shall be accompanied by the following information on the beneficiary: (i) the name of the beneficiary; and (ii) the beneficiary's payment account number. In case of a wire transfer not made to a payment account, the ordering FI shall ensure that the transfer is accompanied by a unique transaction identifier (Regulation (EU) 2015/847, Art. 4(2) and (3)).

Criterion 16.2 - In case of a batch file cross-border transfer from a single payer where the beneficiary FI is situated outside the EEA, the batch file must contain the required and verified information on the originator and the required information on the beneficiary, that is fully traceable. Individual transfers must carry the payment account number of the originator or a unique transaction identifier (Regulation (EU) 2015/847, Art. 6(1)).

Criterion 16.3 – Cross border wire transfers below EUR 1 000 must always be accompanied by: (i) the names of the originator and the beneficiary; (ii) their account numbers, or where Art. 4(3) applies, the unique transaction identifier information (Regulation (EU) 2015/847, Art. 6(2)).

Criterion 16.4 – The ordering FI need not verify the information on the originator referred to in c.16.3 unless there are reasonable grounds for suspecting ML/TF (Regulation (EU) 2015/847, Art. 6(2)). Additionally, irrespective of threshold, suspicious transactions must always be subject to CDD measures (AML/CFT Act, Art. 13(1)(d)).

Criterion 16.5 and 16.6 - Domestic wire transfers must be accompanied by at least the payment account number of both the originator and the beneficiary or by a unique transaction identifier (Regulation (EU) 2015/847, Art. 5(1)). The ordering FI shall, within three working days of receiving a request for information from the beneficiary FI or from an intermediary FI, make available the information set out under c.16.1 or c.16.3 as appropriate (Regulation (EU) 2015/847, Art. 5(2)).

The ordering FI is required to respond fully and without delay to requests for information by appropriate AML/CFT authorities (Regulation (EU) 2015/847, Art. 14).

Criterion 16.7 - The required information on the originator and beneficiary must be retained by the ordering FI for five years (Regulation (EU) 2015/847, Art. 16(1)).

Criterion 16.8 - The ordering FI is prohibited from executing any transfer of funds without complying with the requirements of c.16.1 to c.16.7 (Regulation (EU) 2015/847, Art. 4(6)).

Criterion 16.9 - The intermediary FI is required to ensure that all information received on the originator and the beneficiary that accompanies a transfer of funds is retained with the transfer (Regulation (EU) 2015/847, Art.10).

Criterion 16.10 - No exemption is provided by Regulation (EU) 2015/847 concerning technical limitations that prevent the appropriate implementation of the requirements on domestic wire transfers.

Criterion 16.11 - The intermediary FI is required to implement effective procedures, including, where appropriate, ex-post monitoring or real-time monitoring, in order to detect whether required information on the originator or the beneficiary is missing in a cross-border transfer (Regulation (EU) 2015/847, Art. 11(1)).

Criterion 16.12 - The intermediary FI is required to establish effective risk-based procedures for: (i) determining whether to execute, reject or suspend a transfer of funds lacking the required information on the originator or the beneficiary; and (ii) taking the appropriate follow-up action (Regulation (EU) 2015/847, Art. 12(1)). In the case of repeated failures, it must report these, and the steps taken to address them, to the competent supervisory authority (Regulation (EU) 2015/847, Art. 12(2)).

Criterion 16.13 - The beneficiary FI shall implement effective procedures, including, where appropriate, ex-post monitoring or real-time monitoring, in order to detect whether the information on the originator or the beneficiary is missing in a cross-border transfer (Regulation (EU) 2015/847, Art. 7 (2)).

Criterion 16.14 - In case of wire transfers exceeding EUR 1 000, the beneficiary FI must verify the accuracy of the information on the beneficiary on the basis of documents, data or information obtained from a reliable and independent source before crediting their payment account or otherwise making funds available to the beneficiary (Regulation (EU) 2015/847, Art. 7(3)), as described under the analysis for c.16.7. The information on the beneficiary must be retained by the beneficiary FI for five years (Regulation (EU) 2015/847, Art. 16(1)).

Transfers of exactly EUR 1 000 are not covered – contrary to the FATF Recommendations.

Criterion 16.15 - The beneficiary FI must implement effective risk-based procedures to determine whether to execute, reject or suspend a transfer of funds lacking the required information on the originator and beneficiary and for taking the appropriate follow-up action (Regulation (EU) 2015/847, Art. 8). The same reporting obligations outlined under c.16.12 also apply.

Criterion 16.16 - Regulation (EU) 2015/847 applies to the transfer of funds, in any currency, which are sent or received by an ordering, intermediary or beneficiary FI established in the EEA. The term “PSP” comprises the categories of PSP referred to in Art. 1(1) of Directive 2007/64/EC which includes MVT services.

PIs are responsible for all the activities carried out by agents (Law 209/2019, Art. 46(2)). The same requirement applies to EMIs (Law no. 210/2019, Art. 45 (2)) and credit institutions (NBR Regulation no. 5/2013, Art. 3(1)(26) and (27), and Art. 231 to Art. 233). Post office giro institutions are not responsible for activities conducted by agents.

Criterion 16.17 – (a) MVTS operators shall take into account missing information on the originator or beneficiary in order to determine whether an STR is to be filed (Regulation (EU) 2015/847, Art. 13).

(b) Regulation (EU) 2015/847 does not require a STR to be filed in each country affected by the suspicious wire transfer or to make relevant transaction information available. However, given the principle of territoriality of AML/CFT Laws, when a FI is established in several countries, performs a money transfer between two of its entities, and the transaction proves to be suspicious, it may be required to submit a STR to the FIU in each of these countries pursuant to their respective domestic laws. EU Directive 2015/849 requires compliance officers to file a STR with the FIU of the Member State in whose territory the obliged entity with suspicion is established.

Criterion 16.18 – MVTS operators are covered by a general obligation to block funds and refuse transactions with designated persons and entities, in relation to all transactions (GEO no. 202/2008, Art. 3(1)) – see R.6 and R.7. In addition, MVTS operators that are supervised by the

NRB shall issue internal policies for the implementation of international sanctions regarding the freezing of funds (NBR Regulation No.28/2009, Art. 5(3)).

Weighting and Conclusion

Romania meets most of the criteria for R.16 as a result of the immediate application in the country of the EU Regulation 2015/847. However, post office giro institutions are not responsible for activities conducted by agents. **R.16 is rated LC.**

Recommendation 17 – Reliance on third parties

In the 4th round MER, Romania was rated PC on former R.9. The assessment identified technical deficiencies related to: (i) the requirement to be satisfied that a third party was regulated and supervised in accordance with R.23, R.24 and R.29 and had measures in place to comply with the CDD requirements set out by the FATF; (ii) immediately obtaining from the third party the necessary information; (iii) being satisfied that copies of identification data and other relevant documentation would be made available without delay; and (iv) absence of measures to determine whether the country in which the third party was based adequately applied the FATF Recommendations.

Criterion 17.1 - Covered FIs may rely on a third party that: (i) is a covered FI, DNFBP or VASP in Romania; or (ii) is located outside Romania (AML/CFT Law, Art. 18(1)). Covered FIs supervised by the NBR can rely only on FIs, except for FIs that are: (i) specialised entities carrying out money exchange activity; (ii) PIs that only carry out money remittance and/or payment initiation services; or (iii) postal services providers of payment services (NRB AML/CFT Regulation, Art. 19).

The responsibility for applying the required CDD measures remains with the relying FI (AML/CFT Law, Art. 18(5)).

(a) and (b) - Covered FIs relying on third parties shall ensure that they: (i) immediately obtain from third parties all information necessary in accordance with the covered FI's procedures for the application of CDD covering elements (a) to (c) of CDD measures set out in R.10; and (ii) can immediately obtain from third parties, upon request, copies of the documents on the basis of which the third party has applied its CDD measures (AML/CFT Law, Art. 18(6)).

(c) - Use of this concession is dependent upon the third party: (i) applying equivalent due diligence and record keeping requirements to those in place in Romania (rather than CDD and record keeping measures being in line with R.10 and R.11, as required by this criterion); and (ii) being supervised, the effect of which is that the covered FI must be satisfied that third parties are supervised.

Criterion 17.2 – Covered FIs are prohibited from relying on third parties located in high-risk third countries identified by the EC (AML/CFT Law, Art. 18(2)). The risk that is presented by EEA countries takes account only of the requirement that they apply the same rules as Romania (based on the AMLD) and not other information that may be relevant. This is not fully in line with this criterion.

Criterion 17.3 – (a) Where reliance is placed on a third party that is part of the same financial group, requirements are met if, inter alia, a supervisor determines that the group applies CDD measures, record-keeping procedures and AML/CFT programmes that are similar to those

stipulated in the AML/CFT Law (AML/CFT Law, Art. 18(7)). This provision does not specify that measures must be in line with R.10 to R.12 and R.18, as required by this criterion.

(b) Compliance with CDD measures, record-keeping procedures and AML/CFT programmes must be monitored at group level by the relevant competent authority of the home Member State or of a third country (AML/CFT Law, Art. 18(7)).

(c) As described under c.17.2, covered FIs are prohibited from relying on third parties located in high-risk third countries (distinct from higher risk countries) meaning that risk is entirely avoided (rather than mitigated).

Weighting and Conclusion

There is a framework in place for placing reliance on third parties (which is more restrictive for FIs supervised by the NBR). Some minor elements are missing, so **R.17 is rated LC**.

Recommendation 18 – Internal controls and foreign branches and subsidiaries

In the 4th round MER, Romania was rated PC on both former R.15 and former R.22. There was no requirement for FIs (other than banks) to have an adequately resourced and independent audit function and, for some categories of FIs, training requirements were general. Also, there was no staff screening requirement for FIs supervised by the CSSPP and NOPCML. Branches of credit institutions and FIs were covered by some, but not all, of the requirements under former R.22.

The introduction to R.10 identifies an activity to which the AML/CFT Law does not apply.

Criterion 18.1 - Covered FIs are required to establish policies, internal rules, internal control mechanisms and procedures corresponding to the nature and volume of their activity and having regard to sectorial risk assessments (AML/CFT Law, Art. 24(1)). In addition, each covered FI's BRA must set the base for risk management policies and procedures (AML/CFT Law, Art. 25(3)). Covered FIs must approve and monitor policies, internal rules, mechanisms, and procedures at the level of senior management (AML/CFT Law, Art. 24(3)).

(a) Corresponding to the nature and size of the activity carried out, covered FIs have an obligation to appoint one or more persons who have responsibilities in the application of the AML/CFT Law, specifying the nature and limits of the responsibilities entrusted (AML/CFT Law, Art. 23(1)). Covered FIs also have an obligation to appoint a compliance officer at management level who has responsibility for coordinating implementation of internal AML/CFT policies and procedures, which include measures applicable to internal control, risk assessment and management and compliance management (AML/CFT Law, Art. 23(2) and Art. 24(1)(c)).

(b) Whilst there is no general provision in the AML/CFT Law requiring FIs to screen employees, covered FIs are required to establish adequate standards in the process of recruiting staff with "responsibilities in the application of the AML/CFT Law" (AML/CFT Law, Art. 24(6)). In the case of FIs supervised by the FSA, there are requirements for screening procedures when hiring staff (FSA AML/CFT Regulation, Art. 11).

(c) Covered FIs are required to ensure proper and regular training of employees on the AML/CFT Law and relevant data protection requirements (AML/CFT Law, Art. 24(4)). Training must also extend to recognising operations that may be related to ML or TF, taking account of the risks to which staff are exposed and the size and nature of the covered FI's activity (AML/CFT Law, Art. 24(5)). Employees with responsibilities in the application of the AML/CFT Law must participate in training programmes whenever necessary, but not later than an interval of two years

(AML/CFT Law, Art. 24(6)). In the case of FIs supervised by the NBR and the FSA, training must also highlight the consequences of failing to properly fulfil responsibilities and implications for staff and the FI (NBR AML/CFT Regulation, Art. 22 and FSA AML/CFT Regulation, Art. 11(4)(g)). In the case of covered FIs supervised by the NOPCML, employees must be trained at least once per year or whenever required and carried out according to role and responsibilities (Norms for the application of the AML/CFT Law, Art. 10(1(2))). There is also a requirement to periodically evaluate employees' knowledge (NBR AML/CFT Regulation, Art. 22(3), FSA AML/CFT Regulation, Art. 11(5) and Norms for the application of the AML/CFT Law, Art. 10(2) to (4)).

(d) Depending on the size and nature of the activity, covered FIs have an obligation to put in place an independent audit function to test policies, internal rules, mechanisms and procedures required by the AML/CFT Law (AML/CFT Law, Art. 24(2)). In the case of covered FIs supervised by NBR, they must ensure the existence of an independent auditing process to periodically test policies, internal norms, mechanisms, information systems and procedures for managing the risk of ML/TF (NBR AML/CFT Regulation, Art. 26).

In the case of FIs supervised by the NOPCML, this obligation is dependent upon two of the following criteria being exceeded in the past financial year: (i) total assets: RON 16 000 000; (ii) total net turnover: RON 32 000 000; and (iii) average number of employees: 50 (Norms for the application of the provisions of AML/CFT Law, Art 9). This is not in line with the criterion which mandates the use of an independent audit function to test the system.

Criterion 18.2 – Covered FIs that are part of a group (not just a financial group) have an obligation to implement policies, procedures, and training at group level, which apply at the level of branches, agents, distributors, and majority owned subsidiaries (AML/CFT Law, Art. 2(m) and Art. 24(7)). Such policies, procedures, and controls should address training, but it is not stated that they should cover measures set out in c.18.1 (a), (b) and (d).

(a) Group-wide AML/CFT policies, procedures, and controls must include procedures for information-sharing within the group (AML/CFT Law, Art. 24(7)). There is no explicit reference to those policies and procedures providing for sharing information required for the purposes of CDD or risk management.

(b) There is no specific provision for group-wide AML/CFT policies and procedures to provide for the collection of relevant customer, account, and transaction data at group-level functions, or for the dissemination of that data by group-level functions to members of the group for risk management purposes. However, within a group, it is possible to transmit information reported to the FIU on suspicion unless the FIU forbids this (AML/CFT Law, Art. 38(3)(d)).

c) Whilst covered FIs will be subject to data protection legislation, there is no specific requirement to include adequate safeguards on confidentiality and prevention of tipping-off in group-wide AML/CFT policies and procedures.

Criterion 18.3 – Covered FIs are required to ensure that their foreign branches and majority-owned subsidiaries located in third countries apply AML/CFT measures consistent with home country requirements, where the minimum AML/CFT requirements of the host country are less strict (AML/CFT Law, Art. 10(7)). There are similar provisions for group activities in Member States, but these apply only to branches (and not also subsidiaries) (AML/CFT Law, Art. 25(4)). However, measures applied by subsidiaries in Member States are likely to be consistent with those applied in Romania.

If the law of a third country does not allow proper implementation of AML/CFT measures, the group (though a covered FI) shall: (i) ensure that branches and majority-owned subsidiaries in those countries apply additional measures to effectively deal with the risk of ML/TF; and (ii) inform the competent authority of the “home” third country (AML/CFT Law, Art. 24(9)). Whilst these requirements do not extend to branches and subsidiaries in EU Member States, Member States’ laws allow for proper implementation of measures, and so this is not treated as a shortcoming.

Weighting and Conclusion

FIs are required to implement programmes against ML/TF that take account of risk and size. Whilst there is no general provision in the AML/CFT Law requiring FIs to screen employees when hiring staff, screening must cover those with responsibilities in the application of the AML/CFT Law. In the case of FIs supervised by the NOPCML, the obligation to put in place an independent audit function is dependent upon certain conditions but captures all larger DNFBPs.

As for the application of group-wide AML/CFT programmes, whilst the measures to be covered therein are not sufficiently articulated, foreign group activities are very limited.

The gap in the application of c.18.3 to subsidiaries in EU Member States is considered to be minor, given that AML/CFT measures are expected to be based on AMLDs. The gap in the application of preventive measures to the safekeeping and administration of cash is also minor.

Overall, **R.18 is rated LC.**

Recommendation 19 – Higher-risk countries

In the 4th round MER, Romania was rated PC on former R.21. The main deficiency was the absence of an overall explicit requirement to give special attention to business relationships and transactions with persons in/from countries which do not, or insufficiently, apply the FATF Recommendations; Also, there was no explicit requirement to examine the background and purpose of transactions and no legally defined mechanism for the application of appropriate countermeasures to countries which do not apply, or insufficiently apply, the FATF Recommendations.

The introduction to R.10 identifies an activity to which the AML/CFT Law does not apply.

Criterion 19.1 - FIs shall apply, in addition to standard CDD measures, enhanced due diligence measures in the case of: (i) business relationships and transactions involving persons from countries which do not apply, or which insufficiently apply, international AML/CFT standards (AML/CFT Law, Art. 17(1)(a) and (d)); and (ii) persons established in third countries identified by the EC as high-risk third countries. Whilst it is not expressly stated that countries covered by Art. 17(1)(a) must include those countries subject to a call by the FATF, covered FIs must take account of countries that, according to assessments of international bodies, do not have effective AML/CFT systems. Covered FIs must examine the circumstances and purpose of transactions involving persons from such countries and make available to supervisors, at their request, written findings (AML/CFT Law, Art. 17(6)).

Criterion 19.2 – Covered FIs must apply EDD to business relationships and transactions with persons established in third countries identified by the EC as high-risk third countries (AML/CFT Law, Art. 17¹(1). Additional measures (such as restricting transactions, refusal to establish subsidiaries, branches, or representative offices, increased external supervision etc.) may also be

applied by supervisors to third countries identified by the EC as high-risk. It is not specified that measures applied should be proportionate to the risks. The application of these measures shall be decided under the coordination of the NOPCML, to the extent that they involve the application of enhanced measures to business relationships or transactions (AML/CFT Law, Art/ 17¹(2) to (4)). Romania cannot apply countermeasures independently of a call from the FATF or a decision by the EC, including in cases where EU Member States may be considered to present a high risk.

Criterion 19.3 – The NOPCML shall inform competent supervisors of the vulnerabilities of AML/CFT systems in other countries and shall publish on its website a list of countries which do not, or apply insufficiently, international standards (AML/CFT Law, Art. 17(4)). For this purpose, the NOPCML publishes the FATF lists of jurisdictions subject to a call for action and jurisdictions under increased monitoring – see: [O.N.P.C.S.B. \(onpcsb.ro\)](http://onpcsb.ro).

Weighting and Conclusion

There are only minor shortcomings: (i) it is not specified that countermeasures should be applied in a way that is proportionate to risk; and (ii) the country is not able to apply countermeasures independently from the FATF or EC. In addition, the gap in the application of preventive measures to the safekeeping and administration of cash is minor. **R.19 is rated LC.**

Recommendation 20 – Reporting of suspicious transaction

In the 4th round MER, Romania was rated PC with both former R.13 and SR.IV. The following shortcomings were identified: (i) there was no explicit requirement to report suspicions that funds were the proceeds of a criminal activity; and (ii) FT reporting requirements did not include all the circumstances set out under c.13.2 and IV.1.

Criterion 20.1 - Covered FIs are required to file a report to the NOPCML-FIU if they know, suspect or have reasonable grounds to suspect that the goods come from the commission of crimes or are related to TF (AML/CFT Law, Art. 6(1)). Goods are defined as assets of any kind, whether material or immaterial, movable or immovable, tangible or intangible, as well as legal documents or instruments in any form, including electronic or digital, evidencing a right to or related interests (Art. 2(c), AML/CFT Law). Furthermore, covered FIs are required file the reports if they identify that the business relationship or occasional transaction totally or partially corresponds to the indicators or typologies of suspicious transactions published by the NOPCML-FIU.

In addition, covered FIs are required to immediately submit an STR to the NOPCML-FIU when a transaction or more transactions that have been performed are suspected of having links to ML or TF (AML/CFT Law, Art. 9(2)).

The AML/CFT Law (Art. 8(1)) sets out the requirements for prompt reporting: STRs should be submitted immediately and before performing any transactions related to the reported customer. The NOPCML-FIU is required to immediately confirm the reception of an STR, after which transaction shall remain suspended for 24 hours.

Still, by derogation from the provisions of Art. 8 (cited above) covered FIs may carry out a transaction (AML/CFT Law, Art. 9(1)) without prior suspension, if refraining from performing the transaction is impossible or if the non-performance would jeopardise the pursuit of the beneficiaries of the suspicious transaction. On those occasions, the STR should be submitted within 24 hours.

Criterion 20.2 - The obligation to report suspicious transactions on ML/TF does not contain a minimal threshold and therefore covers suspicious transactions regardless of the amount (AML/CFT Law, Art. 8(1), Art. 9(2)). However, covered FIs are not explicitly required to report attempted transactions, except for the entities operating in the securities and insurance sectors that are required to report “suspicious attempts of ML/TF” under Art. 34(3) of the FSA regulation.

Some VA-related services, some services offered by legal professionals, TCSPs and accountants as well as safekeeping and administration of cash – as defined by the FATF – are not subject to AML/CFT preventative measures; see Chapter 1 for more information. This has an impact on the R.21.

Weighting and Conclusion

Covered FIs, except for the entities operating in insurance and securities sectors, are not explicitly required to report attempted transactions; Some VA-related services, some services offered by legal professionals, TCSPs and accountants as well as safekeeping and administration of cash – as defined by the FATF – are not subject to AML/CFT preventative measures. This has an impact on R.20. **R.20 is rated LC.**

Recommendation 21 – Tipping-off and confidentiality

In the 4th round MER, Romania was rated PC with former R.14. The following shortcomings were noted: (i) protection of covered FIs and DNFBPs and their staff was not available if they reported suspicions unrelated to ML or TF; and (ii) prohibition of tipping-off was limited to non-warning of customers about filing of STRs.

Criterion 21.1 - The submission of STRs by covered FIs, their directors or employees does not constitute a breach of a disclosure imposed by a contract or by law or administrative act and does not give rise to any liability on the part of the obliged entity or its employees (AML/CFT Law, Art. 37 (1)). This extends to the situations where they did not know the exact type of criminal activity and whether such activity has taken place.

Criterion 21.2 – Covered FIs, their management, administration and control bodies, directors and employees are required not to: (i) disclose the information held in connection to ML/TF; and (ii) disclose to the target customers or third parties the fact that the information has been or will be transmitted or that an analysis of ML or TF is under way or could be carried out (AML/CFT Law, Art. 38(2)). These provisions do not prohibit information sharing under R.18 (AML/CFT Law, Art. 38(3)), unless forbidden by the NOPCML-FIU.

Some VA-related services, some services offered by legal professionals, TCSPs and accountants as well as safekeeping and administration of cash – as defined by the FATF – are not subject to AML/CFT preventative measures; see Chapter 1 for more information. This has an impact on the R.21.

Weighting and Conclusion

Some VA-related services, some services offered by legal professionals, TCSPs and accountants as well as safekeeping and administration of cash – as defined by the FATF – are not subject to AML/CFT preventative measures. This has an impact on R.21. **R.21 is rated LC.**

Recommendation 22 – DNFBPs: Customer due diligence

In the 4th round MER, Romania was rated PC on former R.12. There was no explicit provision to prohibit anonymous accounts for DNFBPs, and deficiencies identified for FIs in relation to CDD, PEPs, third parties and record-keeping requirements were equally applicable to DNFBPs.

In addition to DNFBPs covered by the FATF Recommendations, several additional activities are subject to the AML/CFT Law, which are listed under Chapter 1 (section 1.4.4).

Criterion 22.1 - CDD requirements under R.10 apply to covered DNFBPs in the same way that they apply to covered FIs, except as explained below:

(a) Obligations set under c.10.2, except for those related to occasional transactions, apply to casinos. In respect of occasional transactions, casinos have the obligation to apply CDD to customers at the time of: (i) collecting winnings with a minimum value; (ii) when buying or exchanging chips with a minimum value; and (iii) otherwise when performing transactions with a minimum value, where the minimum value represents the equivalent in RON of at least EUR 2 000 through a single operation (AML/CFT Law, Art. 5(1)((d)) and Art. 13(1) and (2)). There is no explicit requirement to ensure that casinos must be able to link CDD information for a particular customer to the transactions that the customer conducts in the casino.

(b) Real estate agents are required to apply CDD in line with c.10.2 (AML/CFT Law, Art. 5(1)(h)). There is no explicit requirement that CDD measures should be conducted by an agent for both the purchaser and the vendor of the property for which the agent acts.

(c) DPMS (acting on a professional basis) are required to apply CDD in line with c.10.2 insofar as they carry out cash transactions representing the equivalent in lei of EUR 10 000, regardless of whether the transaction is executed by a single operation or by several operations which have a connection with each other (AML/CFT Law, Art 5(1)(i) and Art. 13(1)(c)).

(d) Lawyers and notaries public and other persons exercising liberal legal professions are required to apply CDD in line with c.10.2 when they provide assistance for drawing up or completing operations for their clients regarding: (i) the purchase or sale of real estate; (ii) administration of financial instruments, securities or other assets of customers (which will include money); (iii) operations or transactions involving a transfer of ownership (buying and selling of business entities); (iv) establishment or administration of bank accounts, savings accounts or financial instruments (but not accounts linked to such instruments); (v) organisation of the process of subscription of contributions necessary for the establishment, operation or administration of a company; (vi) establishment, administration or management of such companies, collective investment undertakings in securities or other similar structures, as well as if they participate in the name or on behalf of their clients in any financial or real estate operation; and (vii) create, operate or administer trusts, companies, foundations or similar structures (AML/CFT Law, Art. 5(1)(f)). The listed activities are broad enough to cover the requirement of the criterion, except that there is no reference to the management of securities accounts. There is also duplication and lack of clarity in the application of items (vi) and (vii).

The following are required to apply CDD in line with c.10.2: chartered accountants and certified accountants, auditors, tax consultants, persons providing financial, business or accounting advice, and other persons whose main economic or professional activity is to provide, directly or through other persons with whom that person is affiliated, material help, assistance or advice on tax and financial matters (AML/CFT Law, Art. 5(e)). Whilst no definition is provided for “tax and financial matters”, the authorities have explained that it is intended to cover all activities that these

professionals may carry out under specific legislation that governs their activity. Nevertheless, it is not possible to confirm that all elements of this criterion are met.

(e) TCSPs (except for lawyers and accountants – as described above) are required to apply CDD in line with c.10.2 when providing the following services: (i) setting up companies or other legal persons; (ii) performing the function of director of a company, associate of a partnership or joint venture, or acting in a similar capacity within other legal persons, or arranging for another person to exercise such functions; (iii) providing a registered office, place of business, a commercial, postal or administrative address or any other service similar thereto; (iv) exercising as fiduciary in a trust (i.e. acting as trustee) or in a legal arrangement similar to it, or intermediates for another person to exercise this function; and (v) acting as a shareholder (which will include on a nominee basis) or arranging for another person to be a shareholder in a legal person (AML/CFT Law, Art. 2(l) and Art. 5(1)(g)). The listed activities are broad enough to cover the requirement of the criterion, except that (ii) does not cover acting as a secretary.

The following deficiencies are relevant from R.10: (i) there is no explicit requirement to use reliable sources for the verification of BO in the AML/CFT Law (c.10.5); (ii) there is no explicit requirement to understand the purpose and nature of a business relationship (c.10.6); (iii) there is no specific obligation to understand the customer's business profile (c.10.8); (iv) there is no explicit requirement to hold information on the principal place of business, , if different to the address of the registered office or headquarters (c.10.9); (v) it is not clear what information must be collected for legal arrangements (c.10.9); (vi) the definition of BO for foundations does not apply to individual beneficiaries (c.10.10); (vii) one element of the definition of BO does not follow principles established under c.10.10 (c.10.10); (viii) there are no clear provisions requiring the extent of CDD applied to depend on materiality and timing of application to take into account whether and when CDD measures have previously been undertaken and the adequacy of the data obtained (c.10.16); and (ix) there is no provision to address the risk of tipping-off linked to the performance of CDD (c.10.20). In addition, there is no prohibition on keeping anonymous accounts or accounts in obviously fictitious names (c.10.1).

Criterion 22.2 – Requirements and shortcomings described in the AML/CFT Law for covered FIs under R.11 are equally applicable to covered DNFBPs.

Criterion 22.3 – Requirements and shortcomings described in the AML/CFT Law for covered FIs under R.12 are equally applicable to covered DNFBPs.

Criterion 22.4 – The following deficiencies are relevant for R.15: (i) the NRA does not include a separate, comprehensive analysis of ML/TF risks that may arise in relation to the development of new products and new business practices by DNFBPs (c.15.1); (ii) there is no requirement to conduct risk assessments of new products and business practices, and use of technology prior to launch (c.15.2(a)); and (iii) there is no explicit requirement to take appropriate measures to manage and mitigate risks from such assessments (c.15.2(b)).

Criterion 22.5 – Requirements and shortcomings described in the AML/CFT Law for covered FIs under R.17 are equally applicable to covered DNFBPs, except that notaries may not rely on third parties (Notaries Law, Art. 85).

Weighting and Conclusion

There are several gaps in the scope in the application of preventive measures to DNFBPs. In particular, there is no definition for “tax and financial matters” for accountants, and so it is not possible to confirm that all elements are met. In addition, no explicit requirement exists for

casinos to link CDD information to the transactions of a customer, and for real estate agents to conduct CDD measures in relation to both the purchasers and the vendors of property. These deficiencies are not considered to be material.

The shortcomings identified in relation to FIs under R.10 to R.12, R.15 and R.17 are broadly also applicable to DNFBPs (as described). In addition, there is no prohibition on keeping anonymous accounts or accounts in obviously fictitious names.

R.22 is rated PC.

Recommendation 23 – DNFBPs: Other measures

In the 4th round MER, Romania was rated PC on former R.16. The main deficiency was no requirement to report suspicions that funds were the proceeds of a criminal activity, and the FT reporting requirement did not include all the circumstances set out under c.13.2 (and IV.1).

There are three shortcomings in the scope of application of CDD measures to DNFBPs: (i) for lawyers, notaries and other legal professions, there is no reference to management of securities accounts (AML/CFT Law, Art. 5(1)(f)); (ii) for accountants, auditors, etc, there is no definition for “tax and financial matters” and so it is not possible to confirm that all elements are met; and (iii) for TCSPs, there is no reference to acting, or arranging for someone else to act, as secretary of a legal person.

Criterion 23.1 - Except for lawyers (see below), requirements described in the AML/CFT Law for covered FIs under R.20 are equally applicable to covered DNFBPs.

Lawyers, notaries public and other persons exercising liberal legal professions are excluded from the reporting requirement where professional secrecy or legal professional privilege apply. More precisely, they are not required to file a STR in respect of information that they receive from a client or obtain in connection with that client while: (i) evaluating the client’s legal situation as part of judicial proceedings; or (ii) defending or representing the client in legal proceedings, or in connection with such proceedings, including legal advice on starting or avoiding proceedings, regardless of whether such information is received or obtained before, during or after such proceedings (AML/CFT Law, Art. 9(3)). This exclusion shall not apply if lawyers, notaries, and other persons exercising liberal legal professions are aware that the legal advice is provided to support ML or to finance terrorism or whenever they are aware that a client needs legal advice for the purpose of ML or TF (AML/CFT Law, Art. 9(4)). The matters that fall under the professional secrecy or legal professional privilege broadly correspond to this criterion.

Separately, the legal profession is required to protect the confidentiality of client information. However, this duty of confidentiality is set aside in cases that are expressly provided in legislation (Law no. 51/1995 governing the legal profession, Art. 11).

Criterion 23.2 – Covered DNFBPs are required to establish policies, internal rules, internal control mechanisms and procedures corresponding to the nature and volume of their activity and having regard to sectorial risk assessments (AML/CFT Law, Art. 24(1)). In addition, each covered DNFBP’s BRA must set the base for risk management policies and procedures (AML/CFT Law, Art. 25(3)). Covered DNFBPs must approve and monitor policies, internal rules, mechanisms, and procedures at the level of senior management (AML/CFT Law, Art. 24(3)).

(a) Corresponding to the nature and size of the activity carried out, covered FIs have an obligation to appoint one or more persons who have responsibilities in the application of the AML/CFT Law,

specifying the nature and limits of the responsibilities entrusted (AML/CFT Law, Art. 23(1)). However, it is not specified that such appointments should include a compliance officer (though this may be inferred) or for such an appointment to be at management level (c.18.1(a)) (AML/CFT Law, Art. 23(1) and (2)).

(b) There is no direct requirement to apply appropriate standards when recruiting staff. However, those with responsibility in the application of the AML/CFT Law can be hired only after consideration of their suitability and competence – ensuring that they have the necessary AML/CFT knowledge and professional reputation and moral integrity (which may include criminal records and references from previous employers) (NOPCML AML/CFT Rules, Art. 5(4) and (6)).

(c) Covered DNFBPs are required to ensure proper and regular training of employees on the AML/CFT Law and relevant data protection requirements (AML/CFT Law, Art. 24(4)). Training must also extend to recognising operations that may be related to ML or TF, taking account of the risks to which staff are exposed and the size and nature of the covered FI's activity (AML/CFT Law, Art. 24(5)).

(d) Depending on the size and nature of the activity, covered DNFBPs have an obligation to put in place an independent audit function in order to test policies, internal rules, mechanisms and procedures required by the AML/CFT Law (AML/CFT Law, Art. 24(2)). This obligation is dependent upon two of the following criteria being exceeded in the past financial year: (i) total assets: RON 16 000 000; (ii) total net turnover: RON 32 000 000; and (iii) average number of employees: 50 (Norms for the application of the provisions of AML/CFT Law, Art 9). This is not in line with the criterion which mandates the use of an independent audit function to test the system.

Deficiencies noted under c.18.2 are considered not to be applicable given that no DNFBP groups are controlled from Romania and that recent changes to R.23 have still to be reflected in the FATF Methodology.

Requirements to ensure that foreign branches and majority-owned subsidiaries apply AML/CFT measures consistent with home country requirements do not apply to DNFBPs (c.18.3) (AML/CFT Law, Art. 10(6)).

Criterion 23.3 - Requirements and shortcomings described in the AML/CFT Law for covered FIs under R.19 are equally applicable to covered DNFBPs.

Criterion 23.4 – Requirements and shortcomings described in the AML/CFT Law for covered FIs under R.21 are equally applicable to covered DNFBPs.

Weighting and Conclusion

The shortcomings identified in relation to FIs under R.18 to R.21 are broadly also applicable to DNFBPs (as described). In addition, there is no explicit requirement for the compliance officer to be appointed. The gap in the application of preventive measures to DNFBPs highlighted under R.22 (scope) is also relevant here.

R.23 is rated LC.

Recommendation 24 – Transparency and beneficial ownership of legal persons

In the 4th round MER, Romania was rated LC on former R.33 due to a point on effectiveness.

For the purpose of R.24, the following types and forms of legal person are principally used (in order of greatest use): (i) limited liability companies (governed under Company Law); (ii) associations (governed under Associations and Foundations Law); (iii) foundations (governed under Associations and Foundations Law); (iv) joint stock companies (referred to also as corporations) (governed under the Company Law); (v) general partnerships (referred to also as companies in collective name) (governed under the Company Law); and (vi) cooperative societies (governed under L.1/2005).

In addition, legislation also provides for the use of limited partnerships (also referred to as sleeping partnership companies), cooperatives, economic interest groups, credit unions, autonomous administrations, societies, federations, and unions. See Chapter 1 for a list of legal persons by number registered.

Criterion 24.1 - (a) *Limited liability companies, joint stock companies, general partnerships and cooperative societies* - The basic features of legal persons, e.g., minimum number of shareholders and directors and limitation of liability, are set out in the above laws, which are publicly available on www.onrc.ro.

A standard form is used to register such legal persons and is available at the NTRO and its online services portal (www.onrc.ro). In addition, this website provides details of the different types and forms of legal persons that may be established (though it does not explain the basic features of legal persons available in Romania, nor how they might be used).

At the same time, the website of the NTRO and its online services portal contain information on framework models of articles of incorporation for companies.

Foundations and associations

The basic features of associations and foundations are set out in the Associations and Foundations Law.

(b) *Limited liability companies, joint stock companies, general partnerships, and cooperative societies* - The following legislation sets out processes for the creation of companies and partnerships: (i) assistance services - Law no. 359/2004, Art. 35(1); (ii) reservation of name - Company Law, Art. 17(1); (iii) elaboration of constitutive act - Company Law, Art. 5; (iv) payment of share capital - Company Law, Art. 9¹; (v) submission of application for incorporation and authorisation of operation - Law no. 26/1990 (Trade Register Law), Art. 17; (vi) settlement of application for incorporation - GEO no. 116/2009; and (vii) issuance of documents attesting incorporation in trade register - Law no. 359/2004, Art. 8. The same or similar processes apply to cooperative societies.

The Trade Register Law, which is publicly available, specifies the requirements for registration of basic information (see c.24.3) in the NTO, which is done through local trade registers organised in each county and in the municipality of Bucharest. The website of the NTRO (www.onrc.ro) and its online services portal (portal.onrc.ro) contain information on the steps to be followed and the documents necessary for registration in these trade registers. Models of constitutive acts of incorporation are also made available free of charge on the website and online services portal. In addition, information held in the registers (including acts of incorporation) is available to a third party at the counter, by correspondence, and (for a fee) online (Trade Register Law, Art. 4(2)).

There is public access to BO data held in the register (AML/CFT Law, Art. 19(8) and subsequent paragraphs), which is subject to online registration and payment of a fee (which must not exceed administrative costs). There is an approved procedure for online registration and payment of the

necessary fee (Order of the MoJ no. 7.323/C/2020), a form has been approved for requesting information (Decision no. 65/ 12.02.2021), and there is a user guide for the online delivery of information. Information on the BO register may be found at: www.onrc.ro.

Access by FIs, DNFBPs and VASPs to BO registers is publicised at <https://www.onrc.ro/index.php/ro/informatii-privind-beneficiarii-reali>.

Foundations and associations

The Associations and Foundations Law, which is publicly available, specifies the process for the creation of foundations and associations. The same law also sets out requirements for registration of basic information (see c.24.3), which is done through local registers organised in each county and in the municipality of Bucharest. Information from the special registers at the courts is replicated in the national register kept by the MoJ which is available online (www.just.ro/registrul-national-ong/) or can be provided on request (using a published application form) in the form of a certified extract (for a fee) (Order of Minister of Justice no. 1417/C/2006, Art. 1(1) and Art. 2). There is public access to BO data held in the register (AML/CFT Law, Art. 19(8) and subsequent paragraphs). However, the procedure for online registration and access had not been published at the time of the onsite visit¹⁰⁴.

Criterion 24.2 – The NOPCML must coordinate the assessment of national ML/FT risks (AML/CFT Law, Art. 1(3)). Some, but not all, authorities (the NTRO is not included) must also assess risks at the sectorial level (AML/CFT Law, Art. 1(4)). There is no specific requirement to assess risk to do with legal persons.

The NRA report includes an assessment of ML/TF risks associated with legal persons created in the country. The assessment considers threats (types of predicate offences and how legal persons were used) and extent to which legal persons are owned by non-residents but does not clearly articulate what ML risks are presented by different types of legal persons created in Romania. Instead, there is a comment that limited liability companies are particularly vulnerable to abuse (but not why and how). The assessment of TF is based on a number of contextual factors, rather than threats and vulnerabilities. In preparation for the NRA, a technical paper was prepared on ML and TF vulnerabilities with regard to legal persons and legal arrangements in Romania (June 2021) which identified a lack of information on the characteristics of legal persons most exploited by criminals or actual schemes employed.

Criterion 24.3 – *Limited liability companies, joint stock companies, general partnerships, and cooperative societies* - All legal persons established in Romania (listed under c.24.1) - except associations, foundations, and unions - must be registered in one of trade registers (offices) organised in each county or in the municipality of Bucharest within 15 days of adoption of their articles of association (Trade Register Law, Art. 1). These offices are organised under the subordination of the NTRO and function within each county or municipality's court system. Separate legal personality is not recognised until registration in the trade register. The following information is available centrally (Central Trade Register) on the website of the NTRO (Trade Register Law, Art. 2¹(4)) for each of the registers: (i) name; (ii) registration number and fiscal code; (iii) legal form and status; and (iv) registered office (or professional place of business).

The application of a “for profit” company (including a limited liability company, joint stock company and general partnership) for registration shall also be accompanied by data contained

¹⁰⁴ Published in the Official Gazette in January 2013.

in the legal person's deed of incorporation and documents specified in the Company Law (Trade Register Law, Art. 14). In the case of limited liability companies and general partnerships, the register includes information on directors and powers conferred on them (elements of basic regulating powers) (Company Law, Art. 7). In the case of joint stock companies, the articles must include identification data on the first members of the board of directors and supervisory board, and powers conferred on directors (basic regulating powers) (Company Law, Art. 8). Articles of association for legal persons are available to the public on payment of a fee (GD nr. 962/2017).

In the case of the register of cooperative societies, it shall include, inter alia, information on directors and basic regulating powers (Order 2594/C/2008). This information is publicly available.

Foundations and associations

All associations and foundations established in Romania must be registered in local registers organised in each county and in the municipality of Bucharest (offices). The following information is available in a central register maintained by the MoJ (which replicates information from special registers held at the courts): (i) name; (ii) legal form and status; (iii) address of the registered office (headquarters for a foundation); (iv) basic regulating powers; and (v) composition of the first management, administration, and control bodies (Associations and Foundations Law, Art. 6 and Art. 16).

Criterion 24.4 –Legal persons are not required to maintain the information specified under c.24.3.

Limited liability companies must keep a register of shareholders (Company Law, Art. 198) containing name and surname, address and shares held. No reference is made to recording the nature of voting rights. Joint stock companies must keep a register of shareholders containing the name of the shareholder, personal numerical code, address, payments made in respect of those shares and shareholding structure (Company Law, Art. 177 and Art. 178). Rights granted to each category of shares are a mandatory element of the constitutive act of a joint stock company (where there are several categories of shares) and recorded in the commercial register (Company Law, Art. 8(f¹)).

The articles of a general partnership must identify the partners, including general partner of a limited partnership (Company Law, Art. 7). The effect of this requirement is to require a register of partners to be maintained. In the case of cooperative societies, the society must draw up and keep, among other things, the register of cooperative members and the register of social shares (L.1/2005, Art. 68(1)(a) and (f)). Associations and foundations do not issue shares.

BO information is held in the NTRD and so it is not necessary for information on registered shareholders to be held in the country, so long as legal persons can provide this information promptly on request, which is the case (Company Law, Art. 198(3), and Art 178(1)).

Criterion 24.5 –

Information held in trade registers

Legal persons must update information held on their local trade register linked to “registered deeds, facts and mentions” - data from constitutive documents, including articles of association - within 15 days of the change (Trade Register Law, Art. 21(h) and Company Law, Art. 22 and Art 204(4)). This includes basic data (see c.24.3 and c.24.4 above). In addition, “interested parties” may also apply for the register to be updated. This term covers those affected by the legal person's

failure to submit details of such a change, e.g., a former director. However, powers are not available to the local trade registers to request the records of legal persons to ensure that obligations to register changes are complied with.

Information held in register of Associations and Foundations

Measures are not in place to ensure that basic information is accurate or updated on a timely basis.

Information held by legal person

As mentioned under above, legal persons are not required to maintain the information specified under c.24.3.

In the case of a limited liability company, a transfer of shares must be registered in the shareholder register. The change has effect towards third parties only from the moment of its entry in the trade register (Company Law, Art. 203(2)) and whatever is entered in the register is, as a matter of law, accurate and up to date (though it is possible that false information may be given to the registrar or that there is a delay in reporting changes). In the case of a joint stock company, ownership rights over shares are transmitted by a declaration made in the register of shareholders (Company Law, Art. 98(1)). No time limit is set for such a transfer to be registered.

Criterion 24.6 – There are four sources for obtaining BO information on legal persons.

First, all legal persons created under Romanian law are required to obtain and hold information on BO (though no location is specified). In turn, beneficial owners are required to provide legal persons with all information to meet this requirement to hold BO information (AML/CFT Law, Art. 19). The definition of BO is the same as applied to covered FIs, DNFBPs and VASPs – see c.10.10.

Second, obligations are placed on covered FIs, DNFBPs and VASPs to obtain and hold BO information (see c.10.10 and R.11 respectively). In this respect, all legal persons are required to provide BO information when establishing a business relationship or conducting a one-off transaction in Romania (AML/CFT Law, Art. 19(3)). In the case of credit institutions, PIs and EMIs, this BO information is also held centrally in a register of payment and bank accounts (Law no. 207/2015 on the Fiscal Procedure Code (Fiscal Procedure Code) and Order 3746/2020 on the organisation and operation of the central electronic register for payment accounts and bank accounts, Art. 61¹ and Art. 4 of annex 1) – which acts as a third source. Information must be provided at the time that bank and payment accounts - identified by an IBAN - are opened.

Fourth, legal persons (except unions) created under Romanian law must provide, at the time of their registration, BO information to local trade registers for registration in: (i) the central register of beneficial owners held at the NTRO; or (ii) central register for associations or foundations held at the MoJ (AML/CFT Law, Art. 56). Legal persons established before the two registers came into force (except for autonomous administrations, national companies, and companies fully or majority owned by the state) (pre-existing legal persons) were subject to a requirement to file a complete statement of BO before 90 days after 9 March 2022.

Criterion 24.7 – Dealing with the requirements mentioned in c.24.6 in order:

First, legal persons are required to obtain and hold adequate, correct, and up-to-date information on beneficial owners (AML/CFT Law, Art. 19(1)). It has not been explained what “up to date” means in this context, and how soon beneficial owners are required to report changes to the legal person.

Second, obligations are placed on covered FIs, DNBBPs and VASPs to keep documents, data, and information up to date and relevant. See c.10.7(b). In practice, the period between reviews of such documents, data, and information for lower or standard risk business relationships with legal persons may mean that information held is not accurate or up to date (notwithstanding the use of contractual requirements for customers to provide updated information whenever there is a change). As explained at c.24.6, in the case of credit institutions, PIs and EMIs, this BO information is also held centrally in a register of payment and bank accounts (third source) and must be updated when there is a subsequent change (Fiscal Procedure Code, Art. 61).

Fourth, legal persons required to register in the trade register (including those registered prior to the introduction of the BO registers but excluding autonomous administrations, national companies, and companies fully or majority owned by the state) must update BO information whenever a change occurs (AML/CFT Law, Art. 56(1)). This must be done within 15 days of (AML/CFT Law, Art. 56(3)). There is no similar requirement for the register maintained by the MoJ for associations and foundations, though the requirement to update the register may be inferred (AML/CFT Law, Art. 19(1) and (5)). In the case of legal persons registered by the NTRO before creation of the BO registers, the ongoing requirement to update the register of BO is met if at least one declaration concerning the BO has been delivered after entry into force of the requirement (AML/CFT Law, Art. 56(1⁴)). The effect of this provision on accuracy and currency of BO information is not understood and may serve to limit the cases in which changes to BO are reported. This is a moderate shortcoming. In addition, those legal persons that have shareholders in, or are fiscally headquartered in: (i) fiscally non-cooperative jurisdictions; (ii) jurisdictions presenting a high ML/TF risk; or (iii) jurisdictions which are being monitored by relevant international bodies for ML/TF purposes must submit an annual statement of BO. This requirement came into force 90 days after 9 March 2022.

To enforce the requirement to hold accurate and up-to-date data, the two registration authorities are required to compare BO information collected to that held in the centralised trade register (basic information - existence of the legal person and information on legal representative of declarant) and to report discrepancies (AML/CFT Law, Art. 19(7)). In addition, covered FIs, DNFBPs and VASPs are required to report any discrepancies between CDD information that they hold and information available in the central BO registers (AML/CFT Law, Art. 19(7¹)).

In the case of discrepancies, registers must be updated to record a provisional statement of the existence of a discrepancy and the NOPCML notified. The NOPCML must take appropriate measures to resolve the discrepancy in a timely manner (AML/CFT Law, Art. 19(7) and (7²)). Once the discrepancy has been resolved, the provisional entry shall be removed. The procedure for entering/removing entries in/from the registers of BO and for resolving discrepancies has been approved by order of the Minister of Justice (7324/2020) and is supported by internal work instructions and reporting template for obliged entities. The Fiscal Administration and NOPCML are given responsibility for detecting failure by legal persons to submit BO information to the BO registers (AML/CFT Law, Art. 57(3)).

Criterion 24.8 – Where a legal person fails to submit a declaration regarding BO to one of the two central BO registers, its representatives are subject to a fine. The legal person may also be dissolved (AML/CFT Law, Art. 57(1) and (2)). Otherwise, no mechanism has been put in place to ensure that companies cooperate with competent authorities to the fullest extent possible in determining the beneficial owner, e.g., in a case where a beneficial owner has failed to provide information to the legal person.

Criterion 24.9 - No requirements are placed on legal persons (or administrators or liquidators) to maintain BO information post dissolution.

Covered FIs, DNFBPs and VASPs are required to hold CDD information following the termination of a business relationship or completion of a one-off transaction - in line with R.11. See c.11.2, c.15.9 and c.22.2.

BO information held in the two registers for legal persons must be maintained until the earlier date of: (i) ten years after the legal person has been removed from the register (AML/CFT Law, Art. 19(5⁴)); or BO information is removed from the register.

Information contained in the central register of payment and bank accounts must be kept for a period of ten years from the date of termination of business relationships between credit institutions, PIs or EMIs, and their customers (Fiscal Procedure Code, Art. 61¹).

Criterion 24.10 - Basic information held in the two registers is publicly accessible through respective websites following user registration (free of charge). Information in the trade register can also be accessed through a portal (see c.24.1) (Trade Register Law, Art. 4 and Order of Minister of Justice no. 1417/C/2006 regarding access to the National Register of Legal Entities without a patrimonial purpose, Art. 1(1) and Art. 2). Both the NTR0 and MoJ are also obliged to issue information, register extracts and certificates of status about data held, as well as certificates of status that a certain act or fact is or is not registered, and copies and certified copies of documents presented.

Supervisors, investigators, prosecutors, and the NOPCML have access to the two BO registers for legal persons - without any restriction and on a timely basis (AML/CFT Law, Art. 19(8)). Upon registration in the NTR0 service portal, they may do so on-line at no cost (Order of the Minister of Justice no. 7.323/C/2020, Art. 6). However, the procedure for online registration and access to the BO register for associations and foundations had not been published at the time of the on-site visit.

The central electronic register for payment accounts and bank accounts is available on a timely basis to the authorities referred to in Art. 1 of the AML/CFT Law (including supervisors, investigators, prosecutors, and the NOPCML (Fiscal Procedure Code, Article 61¹(5)). Information from the register is directly accessible, without delay, and without being filtered, to the NOPCML (Fiscal Procedure Code, Art. 61¹(6)).

Persons subject to a request to provide data to judicial bodies (Police and prosecutors) must comply with those requests (Law 218/2002 on the organisation and operation of the Romanian Police and CPC, Art. 198). Failure to do so may constitute judicial misconduct, being sanctioned with a judicial fine, or may constitute a crime (CC, Art. 271 - "obstruction of justice"). Inter alia, such powers enable law enforcement to obtain information which is not in the public domain that is held by: (i) offices administering the trade register; (ii) body administering the register of bank and payment accounts; (iii) covered FIs, DNFBPs and VASPs; and (iv) legal persons.

Criterion 24.11 - Legal persons are prohibited from issuing new bearer shares or to carrying out operations with existing bearer shares (AML/CFT Law, Art. 61(1)). Bearer shares issued prior to the coming into force of this prohibition (on 14 July 2019) were required to be converted into registered shares within 18 months (AML/CFT Law, Art. 61(2) to (7)). In the event of failure to do so, there was a requirement for such shares to be annulled (with a corresponding reduction in share capital) (AML/CFT Law, Art. 61(4)). No provisions are in place covering bearer share warrants, but their use has not been observed in practice.

Criterion 24.12 – According to the Civil Code, the power to represent a legal person is given to a director and must be exercised personally. However, a director may transfer this power of representation to another person, if this is expressly provided for in the constitutive act or in a decision of the general meeting of shareholders (Company Law, Art. 71(1)). The exception to this is joint stock companies, where the board of directors is jointly responsible for the management of the company, rather than individual directors (Company Law, Art. 142 to Art. 143²).

The concept of nominee shareholders is expressly recognised in the AML/CFT Law (Art. 2(l)) and Trade Register Law (Art. 21(e)). In a case where a person acts as a shareholder to a third party by way of business, then that person must be authorised or registered to do so and required to collect and hold CDD information on their nominator. In a case where a nominator is also a beneficial owner, then the identity of that person should also be held in the register of BO. However, these provisions are not entirely in line with this criterion since there is no mechanism for disclosing or recording nominee status.

Criterion 24.13 – Failure by the legal representative of a legal person to provide information (including any updates when there are changes) to a BO registry is subject to a fine of RON 5 000 to RON 10 000 (approximately EUR 1 000 to EUR 2 000) (AML/CFT Law, Art. 57(1)). In addition, at the request of the NTRO or NOPCML, a tribunal can dissolve a legal person registered in the NTRO if BO information is not provided within 30 days of the fine being levied (AML/CFT Law, Art. 57(2)); at the same time the fine is imposed the subject is advised that the legal person will be dissolved if the information is not filed. This power to strike-off does not apply to associations or foundations, perhaps with good reason.

Bearer shares not converted into registered shares within the 18-month period allowed were automatically cancelled and share capital reduced by a corresponding amount (AML/CFT Law, Art. 61(5)). At the request of any interested person, a tribunal can decide to dissolve a company that had failed to convert its shares (AML/CFT Law, Art. 61(6) and (7)).

Penalties do not apply for: (i) failure to provide the information at c.24.3 to 24.5 to the respective registrar; (ii) failure by legal persons to hold information listed under c.24.3¹⁰⁵; and (iii) failure to maintain information under c.24.9.

Sanctions applied to covered FIs, DNFBPs or VASPs for failing to comply with AML/CFT requirements are considered at R.35.

Criterion 24.14 – Basic information held in the registers is available to a third party in electronic format - see c.24.10.

Details of BO information held in the central electronic register for payment accounts and bank accounts is available on a timely basis to foreign competent authorities through their Romanian counterparts.

Upon registration in the NTRO service portal, foreign competent authorities may have access to the BO registers on-line (Order of the Minister of Justice no. 7.323/C/2020, Art. 6). Online access is not available for associations or foundations, but available on a timely basis to foreign competent authorities through their Romanian counterparts.

¹⁰⁵ A penalty was introduced in November 2022 for joint stock companies that fail to keep a register of shareholders.

Administrators of the BO registers must cooperate with the authorities managing similar registers in other EU Member States and with the EC in order to implement the different types of access permitted (AML/CFT Law, Art. 19⁵(5)). Legislation had still to be enacted in this respect by the end of the on-site visit, and the national registers of legal persons were not yet connected to the EU's BRIS system. Meanwhile, administrators of the registers must provide BO information to other EU registers free of charge and on a timely basis (AML/CFT, Art. 19(12)).

One of the objectives of the NOPCML is to exchange information on its own initiative or upon request, based on reciprocity, with institutions having similar functions or with other competent authorities (AML/CFT Law, Art. 39(3)(q)). In this respect, the NOPCML-FIU has a legal basis for exchanging basic and BO information on a timely basis with other FIUs and with other foreign competent authorities to prevent and combat ML/TF – subject to reciprocity and similar safeguards being in place with respect to confidentiality of information handled (AML/CFT Law, Art. 36(1) and (2)). The NOPCML-FIU is also able to exercise its powers at the request of another FIU (AML/CFT Law, Art. 36(5) and (6)). The NOPCML -FIU must also provide BO information held in the BO registers to other EU FIUs and competent authorities free of charge and on a timely basis (AML/CFT, Art. 19(12)).

The Police may provide international cooperation on a timely basis in relation to basic and BO information, including transmission of data held in registers, through the Centre for International Police Cooperation, which includes the Europol National Unit and National Interpol Office (GEO 103/2006 on some measures to facilitate international police cooperation, and Law 56/2018 on the cooperation of Romanian public authorities with the EU Agency for cooperation in law enforcement (Europol)). Similar powers are available in respect of judicial cooperation (within criminal judicial procedures (Law 302/2004 on international judicial cooperation in criminal matters)).

Foreign requests made to a domestic authority can be passed to another domestic authority for a response.

Criterion 24.15 - There are no policies or procedures covering monitoring of the quality of assistance that is received, or evidence of monitoring.

Weighting and Conclusion

The extent of the current risk assessment for legal persons is too limited (c.24.2).

Romania has a framework in place that facilitates access to basic and BO information by competent authorities on a timely basis. However, there are deficiencies in the mechanisms for accessing this information: (i) powers are not available to local trade registers to request records to ensure that obligations to register changes in basic information are complied with; (ii) the extent to which pre-existing legal persons must provide BO information when there is a change is unclear (c.24.7); and (iii) there is no mechanism for disclosing or recording the nominee status of a director (where permitted) or shareholder (c.24.12). There are also gaps in the availability of sanctions for failing to meet statutory requirements (c.24.13). These deficiencies are not considered to be minor, particularly within the context of limited operational coordination between the authorities on administration of the framework for accessing basic and BO information.

Other shortcomings are regarded as minor, including the absence of a bespoke mechanism for ensuring that companies cooperate to the fullest extent possible (c.24.8) (on the basis that this

source of information is not used in practice) and absence of measures taken in respect of share warrants (the use of which is not observed in practice). **R.24 is rated PC.**

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

In the 4th round MER, Romania was not assessed against former R.34.

“Fiducia” are governed in Romania under Title IV of the Civil Code. A trust is a legal transaction whereby one or more settlors transfer property rights to one or more trustees for a specific purpose for the benefit of one or more beneficiaries. These rights form an autonomous estate, distinct from the other rights and obligations of the trustees' estates. The authorities have confirmed that a fiducia meets the test set out in Article 2 of the Hague Convention on Trusts.

There are no other types of legal arrangement in Romania.

Criterion 25.1 - (a) The contract for a fiducia must include: (i) the identity of the founder(s); (ii) the identity of the trustee(s); and (iii) the identity of the beneficiary or beneficiaries, or at least the rules that allow their determination (Civil Code, Art. 779). No reference is made in the Code to the protector (if any) or any other person exercising ultimate effective control over the trust, and there is no requirement in the Code for information held to be adequate and current.

However, trusts (including fiducia governed under the Civil Code) and any legal arrangements like trusts (distinct from the trustee or equivalent) are obliged to hold adequate, correct, and up-to-date information on their BO (AML/CFT Law, Art. 19(1)). This covers: (i) the settlor(s) (or equivalent), as well as persons designated to represent his/her interests in accordance with the law (i.e. the protector in the case of a trust); (ii) the trustee; (iii) the beneficiary(ies) or, if not yet known, the category of persons in whose main interest the legal arrangement is established; and (iv) any other natural person exercising ultimate control (AML/CFT Law, Art. 4(2)(b)(1) to (4)).

The law does not specify the nexus that trusts must have with Romania in order to be subject to this requirement, but it can be implied that it will apply to trusts where the trustee has a place of residence in Romania, or which establish a business relationship in Romania, or acquire real estate in Romania (AML/CFT Law, Art. 5¹) - since these trusts are covered by a requirement to file BO information in the central register maintained by the Fiscal Administration. In practice, this obligation in the AML/CFT Law would be met by the trustee (or equivalent) since the trust has no separate legal personality, and trustee would be punished for failing to comply with this requirement (as an individual or legal person – see c.25.7). It is considered that the combined effect of these requirements is that it is most likely that the trustee of a fiducia (i.e., trust governed under Romanian law) will obtain and hold information in line with c.25.1(a).

(b) There is no requirement placed on express trusts governed under Romanian law (fiducia) to hold information on other regulated agents of, and service providers to, the trust.

(c) Lawyers, accountants and TCSPs who act as professional trustees are subject to CDD requirements in the AML/CFT Law, which include maintaining CDD information for at least five years after involvement with a trust ceases. See c.11.2 and c.22.2. However, this requirement does not extend to information required under (b).

Criterion 25.2 – No requirement is placed in the Civil Code on trustees of fiducia to keep information held accurate and up to date. However, trusts (including fiducia governed under the Civil Code) and any legal arrangements like trusts are obliged to hold: (i) adequate; (ii) correct; and (iii) up-to-date information, on their BO (AML/CFT Law, Art. 19(1)). This latter element is stricter than the FATF Standard which requires information to be as up to date as possible and

updated on a timely basis, rather than updated as soon as there is a change. In practice, this obligation would be met by the trustee (or equivalent) – see c.25.1 above.

Lawyers, accountants and TCSPs who act as professional trustees are also subject to CDD requirements in the AML/CFT Law, which include ensuring that documents, data, or information collected is kept up to date and relevant.

Criterion 25.3 - Trustees or persons holding equivalent positions in legal arrangements like trusts (governed under Romanian or foreign legislation) must disclose their status to covered FIs, DNFBPs and VASPs when they form a business relationship or perform an occasional transaction (AML/CFT Law, Art. 19(2)).

Criterion 25.4 - There are no provisions which prevent: (i) competent authorities from obtaining timely access to information held by trustees; or (ii) trustees providing FIs and DNFBPs, upon request, with information on BO and assets of the trust. In the case of the latter, trusts are required to provide covered FIs, DNFBPs and VASPs with BO information when they are conducting CDD (AML/CFT Law, Art. 19(3)).

Criterion 25.5 – BO information held in the central register by the Fiscal Administration must be made available on a timely basis to: (i) supervisors; (ii) judicial bodies (investigators and prosecutors), under the conditions of Law no. 135/2010 on the CPC; and (iii) the NOPCML (AML/CFT Law, Art. 19(8¹)).

The central electronic register for payment accounts and bank accounts is available on a timely basis to the authorities referred to in Art. 1 of the AML/CFT Law (including supervisors, investigators, and prosecutors, and the NOPCML (Fiscal Procedure Code, Article 61¹(5)). Information from the register is directly accessible, without delay, and without being filtered, to the NOPCML (Fiscal Procedure Code, Art. 61¹(6)).

Trustees, DNFBPs and FIs are obliged to provide all information held, including information on assets managed, directly to the NOPCML-FIU within a maximum of 15 days from the date of receipt of the request, and for requests of an urgent nature, marked in this sense, within the term indicated (AML/CFT Law, Art. 33(1) and (2)). Obligated entities are under a similar obligation to provide information to their respective supervisor.

Persons subject to a request to provide data to judicial bodies (Police and prosecutors) must comply with those requests (Law 218/2002 on the organisation and operation of the Romanian Police and CPC, Art. 198). Inter alia, such powers enable law enforcement to obtain information which is not in the public domain that is held by: (i) trustees; (ii) body administering the register of bank and payment accounts; and (iii) covered FIs, DNFBPs and VASPs.

Criterion 25.6 - Administrators of the BO registers must cooperate with the authorities managing similar registers in other EU Member States and with the EC in order to implement the different types of access permitted (AML/CFT Law, Art. 19⁵(5)). The Fiscal Administration must also provide BO information to other EU registers free of charge and on a timely basis (AML/CFT, Art. 19(12)).

One of the objectives of the NOPCML is to exchange information on its own initiative or upon request, based on reciprocity, with institutions having similar functions or with other competent authorities (AML/CFT Law, Art. 39(3)(q)). In this respect, the NOPCML-FIU has a legal basis for exchanging basic and BO information with other FIUs and with other foreign competent authorities to prevent and combat ML/TF – subject to reciprocity and similar safeguards being in place with respect to confidentiality of information handled (AML/CFT Law, Art. 36(1) and (2)).

The NOPCML-FIU is also able to exercise its powers at the request of another FIU (AML/CFT Law, Art. 36(5) and (6)). The NOPCML-FIU must also provide BO information held in the BO register to other EU FIUs and competent authorities free of charge and on a timely basis (AML/CFT, Art. 19(11)).

The Police may provide international cooperation in relation to BO information, including transmission of data held in registers, through the Centre for International Police Cooperation, which includes the Europol National Unit and National Interpol Office (GEO 103/2006 on some measures to facilitate international police cooperation, and Law 56/2018 on the cooperation of Romanian public authorities with the European Union Agency for cooperation in law enforcement (Europol)). Similar powers are available in respect of judicial cooperation (within criminal judicial procedures (Law 302/2004 on international judicial cooperation in criminal matters)).

Foreign requests made to a domestic authority can be passed to another domestic authority for a response.

Criterion 25.7 - A breach of the requirement set in AML/CFT Law, Art. 19(1) for trusts to hold adequate, correct and up-to-date BO information is subject to: (i) for individuals - a warning or a fine of between RON 25 000 (EUR 5 000) and RON 150 000 (EUR 30 000); or (ii) for legal persons - as (i) but with the maximum limit increased by 10% of total income reported in the fiscal period immediately prior to the contravention. Also, with regard to legal persons, the sanction can be imposed separately on each member of the management body and individuals responsible for the contravention (AML/CFT Law, Art. 43(1)(a), (2) and (3)). In light of average net earnings per month (approximately EUR 780 at March 2022), the range of sanctions for individuals appears proportionate. However, the penalty for a legal person with very low turnover means that the fine on that legal person would also be low.

The sanctions mentioned above also apply to other breaches of Art. 19, namely: (i) failure by the beneficial owner to provide information and documents to the trust so that obligations under Art. 19(1) can be met; (ii) trustee's failure to disclose their status as trustee; and (iii) trustee's failure to provide BO information to covered FIs, DNFBPs and VASPs.

R.35 sets out the additional sanctions that may be applied to professional trustees for failing to meet obligations set out in the AML/CFT Law. In the case of serious, repeated, or systematic contraventions by a professional trustee, the upper limit of a fine for an individual is increased by RON 50 000 (EUR 10 000) and for legal persons by RON 5 million (EUR 1 million). The range of sanctions for professional trustees that are individuals does not appear proportionate.

Under the Civil Code, failure to register a trust contract or amendments thereto within one month from the date of their conclusion could lead to absolute nullity of the contract (see c.25.1).

Criterion 25.8 - Failure to provide the NOPCML-FIU with information that it has a power to request (see c.25.5) is subject to a sanction (AML/CFT Law, Art. 43(1)(c) and Art. 43(2)). As noted above (c.25.7), the penalty for a trustee that is a legal person with very low turnover means that the fine on that legal person would also be low, and the range for professional trustees that are individuals does not appear proportionate.

Failure to provide data to judicial bodies (Police and prosecutors) may constitute judicial misconduct, being sanctioned with a judicial fine, or may constitute a crime (CC, Art. 271 - "obstruction of justice").

Weighting and Conclusion

Romania has introduced a register of trusts, whereby BO information on trusts is held centrally and made available to competent authorities.

However, the range of sanctions for trustees that are legal persons with very low turnover and fail to apply requirements in the AML/CFT Law means that the fine on that trustee would also be low, and the range of sanctions for professional trustees that are individuals does not appear proportionate. Also, there is no requirement to hold information on other regulated agents of, and service providers to, the trust. Given the small number of trusts administered in Romania, these deficiencies have not been weighted heavily.

R.25 is rated LC.

Recommendation 26 – Regulation and supervision of financial institutions

In the 4th round MER, Romania was rated PC on former R.23 due to: (i) no licensing/ registration and regulation of activities of the Post Office; (ii) all exchange offices not being reauthorised at the time of the evaluation; (iii) lack of clarity in legislation on the identity of the authority undertaking day to day AML/CFT activity; and (iv) the NBR's approach to supervision not being explicitly defined or consistently implemented.

The introduction to R.10 lists an activity to which the AML/CFT Law does not apply and so which is not subject to regulation and supervision.

Criterion 26.1 - The NBR is responsible for the supervision of the following entities for compliance with the AML/CFT Law: (i) credit institutions (banks and credit unions) that are Romanian legal persons (including where they provide services in another Member State without physical presence in that State); (ii) PIs that are Romanian legal persons (including where they provide services in another Member State without physical presence in that State); (iii) EMIs that are Romanian legal persons (including where they provide services in another Member State without physical presence in that State); (iv) non-bank FIs registered in the Special Register; and (v) non-bank FIs registered only in the General Register which are PIs or EMIs¹⁰⁶ (AML/CFT Law, Art. 27(1)). The NBR is also responsible for the supervision of Romanian branches of foreign legal persons of the aforementioned types of FIs (AML/CFT Law, Art. 27(1)). Romanian institutions which operate in another EU Member State with a physical presence (branch) are supervised by the competent authority of the host Member State.

The FSA is responsible for the supervision of the following for compliance with the AML/CFT Law and underlying regulations: (i) insurance and reinsurance companies; (ii) insurance intermediaries; (iii) investment firms; (iv) investment intermediaries; (v) investment fund

¹⁰⁶ There are three types of registration for non-bank FIs depending on permitted volumes. Non-bank FIs registered in the Entry Register are only allowed to undertake limited lending activities (pawnshops and credit unions). More activities can be provided by ones registered in the General Register (including financial leasing). Significant activity requires a registration in the Special Register. Only the latter are supervised for prudential and AML/CFT purposes by the NBR; the others are supervised only for AML/CFT compliance by the NOPCML. Non-bank FIs registered in the General or Special Register can also apply for a hybrid PI/non-bank FI or EMI/non-bank FI licence. Then they would also automatically be supervised by the NBR.

managers; (vi) collective investment schemes; (vii) central depositories; and (viii) administrators of voluntary pension schemes and occupational pension schemes (AML/CFT Law, Art. 28(1) and Government Emergency Ordinance no. 93/2012 on the establishment, organisation and functioning of the FSA (GEO on the FSA), Art. 2(1)). The FSA is also responsible for the supervision of Romanian branches of foreign legal persons of the aforementioned types of FIs (AML/CFT Law, Art. 28(1)).

The NOPCML is responsible for the supervision of all other covered FIs for compliance with the AML/CFT Law that are not subject to supervision by the NBR or FSA (AML/CFT Law, Art. 26(1)(d)). This includes lending (e.g., credit unions and pawn shops), financial leasing (there are no leasing companies, but leasing can be provided by NBFIs), exchange offices, and the post office (when providing payment services).

The NBR and NOPCML are responsible for supervision for compliance with Regulation (EU) 2015/847. In the case of the latter, this covers postal service providers which operate payment services (AML/CFT Law, Art. 29(1)).

The NBR, FSA and NOPCML are responsible for supervision of implementation of international sanctions which impose blocking of funds, as well as international sanctions which impose restrictions on certain transfers of funds and financial services adopted in order to prevent PF (GEO no. 202/2008, Art. 17(1)).

Criterion 26.2 – Core Principles FIs are required to be licensed as follows: (i) credit institutions by the NBR (GEO no. 99/2006 on credit institutions and capital adequacy, Art. 10(1); (ii) insurance and reinsurance companies by the FSA (Law no. 237/2015 on the authorisation and supervision of insurance and reinsurance, Art. 1(1)(a)(a), Art. 20(1), Art. 164 and Art. 173); (iii) investment firms by the FSA (Law no. 297/2004 on the Securities Market, Art. 273¹); (iv) investment intermediaries by the FSA (Law no. 126/2018 on the Markets for Financial Instruments, Art. 262); and (v) investment fund managers and collective investment schemes by the FSA (GEO no. 32/2012, Art. 4, Art. 9 and Art. 197) .

Other FIs also have to be licensed or registered as follows: (i) PIs by the NBR (Law no. 209/2019 on payment services and amending other normative acts, Art. 2, Art. 8 and Art. 9(1)); (ii) EMIs by the NBR (Law no. 210/2019 on the activity of issuing electronic money, Art. 7); (iii) non-bank FIs and other lenders (credit unions, pawnshops) by the NBR (for statistical purposes only) (Law no. 93/2009 on non-bank FIs, Art. 25 and Art. 61); (iv) insurance intermediaries by the FSA (Insurance Intermediary Law no. 236/2018, Art. 1(1)(c)) and Art. 29); (v) central depositories by the FSA (Law no. 126/2018 on the Markets for Financial Instruments, Art. 262); (vi) administrators of voluntary pension schemes and occupational pension schemes by the FSA (Law no. 204/2006 on voluntary pensions, Art. 1 and Art. 123 and Law no. 1/2020 on occupational pensions, Art. 1 and Art. 146); and (vii) exchange offices by the interinstitutional Committee under the MoF (AML/CFT Law, Art. 31(1) and Art. 47(2)).

Post office giro institutions are authorised by the National Authority for Administration and Regulation in Communications (ANCOM) according to the provisions of GEO no. 13/2013 and of the Decision of the President of ANCOM no. 313/2017. See c.14.1.

Given the robust set of requirements for obtaining a banking licence, as well as continuous, on-going requirements, the existence of shell banks is not possible in Romania (GEO no. 99/2006 and NBR Regulation No. 5/2013 on prudential requirements for credit institutions).

Criterion 26.3 – Except in the case of exchange offices and postal service providers, sectoral laws allow measures to be taken to prevent criminals or their associates from holding (or being the beneficial owner of) a significant or controlling interest or holding a management function in a covered FI:

- (i) At the time that an application is made for licensing or registration of that covered FI (GEO No. 99/2006 on credit institutions and capital adequacy, Art. 38(1)(e) and (f) and Art. 108 and, NBR Regulation no. 12/2020 on authorisation of credit institutions, Art. 16 to Art. 18, and NBR Regulation No 5/2013 on prudential requirements for credit institutions, Art. 67⁷, Art. 67⁴⁵ and 67¹³⁰; Law No. 209/2019 on payment services, Art. 11, Art. 13 and Art. 14, and NBR Regulation no. 4/2019, Art. 8, Art. 14 and Art. 15; Law No. 210/2019 on the activity of issuing electronic money, Art. 10 and Art. 11 and NBR Regulation No. 5/2019, Art. 8 to Art. 15; Law no. 93/2009 on non-bank FIs, Art. 16, Art. 19 and Art. 20, and NBR Regulation no. 20/2009 on non-bank FIs, Art. 13, Art. 14 to Art. 17¹, Art. 19, Art. 21 and Art. 23; Law No 237/2015 on market entry and refusal of licensing, Art. 8(8), Art. 14(3), Art. 21(2), Art. 23 and Art. 24(1), FSA Norm No 20/2016 on the application of Law No 237/2015, Art. 3(1), Art. 7(18), Law No 236/2018 on insurance distribution, Art. 3(1)(18), Art. 4(32), Art. 9(2)(a), Art. 28(1), Art. 35(4) and Art. 36(1), and FSA Norm No 22/2021 regarding insurance distribution, Art. 10(2), Art. 11(1), Art. 22(9), and Art. 30 (insurance sector); Government Emergency Ordinance no. 32/2012 regarding collective investment undertakings in securities and investment management companies for completing Law no. 297/2004 of securities market, Art. 9(d), Art. 39¹(24¹), in conjunction with Law no. 126/2018 on the markets for financial instruments, Art. 34, Art. 35, Art. 36, Art. 37, Art. 39, Art. 99(2), Art. 129(3), Art. 179 (capital market sector); Law no. 204/2006 on voluntary pension schemes (pillar III), Art. 3, Art. 4, Art. 7, Art. 8 and Art. 21, FSA Norm 23/2016 on the authorization to set up a pension company and the authorization to administer voluntary pension funds, Art. 6 to Art. 9 and Art. 11, Law no. 1/2020 on occupational pensions (pillar IV), Art. 6 to 8, and Art. 147, and FSA Norm no. 13/2020 regarding the authorization of the administrators of occupational pension funds); and FSA Regulation No 1/2019 on the evaluation and approval of the members of the management structure and of the persons holding key positions within the entities regulated by the FSA, Art. 3, Art. 5, Art. 12 and Art. 13 (insurance sector, capital markets and pension funds).
- (ii) After licensing or registration for the approval of an acquisition or appointment (GEO No. 99/2006 on credit institutions and capital adequacy, Art. 25, Art. 26 and Art. 108(3), NBR Regulation no. 12/2020, Art. 16 and Art. 17, and NBR Regulation No 5/2013 on prudential requirements for credit institutions, Art. 67¹³⁰; Law No 209/2019 on payment services, Art. 13(3), Art. 30, Art. 31 and Art. 33 and NBR Regulation No 4/2019, Art. 8 to Art. 15, Art. 73(1) and (2), Art. 74(k) and (l); Law No 210/2019 on the activity of issuing electronic money, Art. 10 and Art. 69 to Art. 71 and NBR Regulation No 5/2019, Art. 8 to Art. 13 to Art. 16, Art. 52, Art. 53 and Art. 60; Law no. 93/2009 on non-bank FIs, Art. 16, Art. 20, Art. 31 and NBR Regulation no. 20/2009 on non-bank FIs, Art. 13, Art. 14 to Art. 17¹, Art. 19, Art. 21, Art. 23, Art. 39, Art. 44, Art. 45, Art. 51 and Art. 52; FSA Regulation No 3/2016 on prudential assessment of acquisition and increase in qualifying holdings in entities supervised by FSA, Art. 20 and Art. 29 to Art. 35; and FSA Regulation No 3/2016 on prudential assessment of acquisition and increase in qualifying holdings in entities supervised by FSA, Art. 20, and Art. 29 to Art. 35, and FSA Regulation No 1/2019 (as above) (insurance sector, capital markets and pension funds).

- (iii) When there is a change in circumstances (GEO No. 99/2006 on credit institutions and capital adequacy, Art. 108(1), Art. 230 and Art. 232, NBR Regulation no. 12/2020 on authorisation of credit institutions, Art. 131(2) and NBR Regulation No 5/2013 on prudential requirements for credit institutions, Art. 67¹³⁵; Law No. 209/2019 on payment services, Art. 13(3), Art. 74 and Art. 75 and NBR Regulation no. 4/2019, Art. 15, Art. 74, Art. 75(1) and (2)(h), Art. 76, and Art. 84 to Art. 86; Law No. 210/2019 on the activity of issuing electronic money, Art. 72 and Art. 73 and NBR Regulation No. 5/2019, Art. 49(1)(c), Art. 60 and Art. 72 to Art. 74; Law No. 93/2009 on non-bank FIs, Art. 16, Art. 20, Art. 58 and Art. 59, and NBR Regulation No. 20/2009 Art. 13. Art. 14 to Art. 17¹, and Art. 21, Art. 23, Art. 39 and Art. 45; and FSA Inspection (Control) Regulation (FSA Regulation no. 4/2021, Art. 1, Art. 2(2)(1) to (7) and (26), Art. 4, Art. 6, Art. 14, Art. 25 to Art. 27, Art. 29 and Art. 32 and FSA Regulation No 1/2019 (as above) (insurance sector, capital markets and pension funds).

Whilst the supervisor of exchange offices has an obligation to verify if the persons who hold a management position in, or are the beneficial owners of, those FIs are “suitable and competent” persons capable of protecting those entities against their “abusive use for criminal purposes” (an undefined term) (AML/CFT Law, Art. 31(2)), it is not given explicit powers to address this obligation through the AML/CFT Law or relevant sectoral law. In addition, the Commission for Authorisation of Foreign Exchange Activity has a power under sectoral legislation to request an extract from a criminal record, but it may do so only: (i) with the express written consent of persons subject to verification; and (ii) for limited categories of offences that do not cover all that are designated by the FATF (GD no. 1096/2022 for the approval of the procedure for the authorisation of exchange offices, Art. 1(1), Art. 4(1), Art. 5(g) and (j), Art. 5(3)(a), Art. 5(6), Art. 6(2) and Art. 31, and GD 1000/2015 and Minister of Finance 664/2012). Also, legal provisions dealing with changes after initial licensing of foreign exchange are not sufficiently clear to the AT.

In the case of postal service providers, authorisation does not require an explicit decision by ANCOM; rather it follows notification of an intention to provide postal services (GEO no. 13/2013, Art. 5(1)).

Whilst FSA Regulations apply to a collective investment undertaking marketing its own units or shares, information has not been provided on provisions in place to prevent criminals or their associates from holding (or being the beneficial owner of) a significant or controlling interest in such an undertaking.

Criterion 26.4 – (a) The latest IMF FSAP report (2018) confirms that regulation and supervision of banks is in line with the core principles where relevant for AML/CFT. For IOSCO, the AT has not been provided with evidence that regulation and supervision are in line with relevant core principles. For the IAIS, the authorities have highlighted conclusions of self-assessments for some of the core principles relevant for AML/CFT, but copies of the self-assessments, subsequent actions taken to address shortcomings identified, and details on the body overseeing the action plan were not made available.

(b) Legislation requires all AML/CFT supervisors, when applying a RBA to AML/CFT supervision, to clearly understand ML/FT risks, have access to relevant information, and base supervisory activities around risk profiles prepared for covered FIs (which should be periodically reviewed) (AML/CFT Law, Art. 26(8)). The NBR is required to apply an RBA to its supervisory activities (AML/CFT Law, Art. 27(1)), as is the NOPCML (NOPCML AML/CFT Rules, Art. 26(3)). The FSA

applies an RBA in line with FSA AML/CFT Regulation (Art. 36 and Art. 43) and its internal procedures (see below).

Covered FIs supervised by the NBR are subject to the NBR RBS Procedure (approved in November 2021). This provides for the application of a RBA, and takes account of sectoral risk (NBR RBS Procedure, para. 3). Covered FIs supervised by the FSA are subject to: (i) FSA Regulation No. 4/2021 regarding the control activity carried out by the FSA; and (ii) procedure for the control activity carried out by the FSA (issued in April 2021, last amended in June 2022). These documents provide for the application of a RBA. Supervisory activity is developed based on two components: (i) compliance component; and (ii) risk component – which refers both to both entity and market level risks (FSA Regulation No. 4/2021, Art. 4(1) and Art. 39). The NOPCML developed its first RBS procedure in 2007 and it was last updated in February 2022 (Operational Procedure PO.05/01 – risk-based surveillance activity) and acknowledges sectoral risk.

Criterion 26.5 – (a) and (b) Inter alia, the NBR’s assessment of entity risk must take account of: (i) risks arising from the business model, size, nature, volume, and complexity of the covered FI’s activities; and (ii) risks arising from internal governance and the internal control system (NBR RBS Procedure, para. 12). The covered FI’s entity risk rating then sets the basis for deciding on the frequency, intensity, and depth of supervisory actions (NBR RBS Procedure, para. 20). The NBR then uses a combination of off-site and on-site supervisory tools. Risks at sectoral, country, and supranational level are considered within the risk factors designed by the NBR. The NBR also clusters some institutions and sectors (such as non-bank FIs according to their type of business) and designs its RBA based on their inherent characteristics and risks.

The FSA’s assessment of entity risk must take account of: (i) risks arising from the business model, e.g. the nature and complexity of the covered FI’s activities, distributions channels, types of customers; and (ii) quality of the internal governance arrangements and structures, including internal audit and compliance functions, and policies and procedures (FSA AML/CFT Regulation, Art. 40). The FSA must also identify risk factors to which covered FIs are exposed taking into account information provided by the Romanian government, including country risk (FSA AML/CFT Regulation, Art. 36). The covered FI’s entity risk rating then sets the basis for deciding on the intensity and frequency of supervisory actions (FSA Methodology for elaboration, modification and monitoring of the periodic control plan, Chapter II, Section 3). Risks at sectoral, country, and supranational level are considered within the risk factors designed by the FSA.

The NOPCML’s assessment of entity risk must take account of: (i) transaction risk (maximum of total revenues/total expenses), risk of compliance (results of previous supervision), product risk (field of activity), geographical risk and reporting risk; and (ii) inadequate conduct of internal activities, existence of untrained personnel or inadequate systems (NOPCML Operational Procedure PO-05.01, Art. 11(b) and Art. 15). The frequency and intensity of supervision of covered FIs by the NOPCML is based on an assessment of sectoral ML/TF risk, which takes account of the supranational risk assessment conducted by the EC in the absence of an NRA (NOPCML Operational Procedure PO-05.01, Art. 3 and Art. 4). The intensity of supervision is determined by the covered FI’s entity risk rating (NOPCML Operational Procedure, Art. 29).

No shortcomings have been identified for supervisors in respect of (a) or (b).

(c) The frequency and intensity of supervision does not take account of the degree of discretion allowed under the RBA, e.g., provisions allowing simplified measures to be applied (AML/CFT Law, Art. 16(1) and reliance to be placed on third parties (AML/CFT Law, Art. 18).

As concerns risk assessment at group level, the circumstances when this is necessary are highly limited (from the institutions supervised by the NBR, only two credit institutions have a rather small, foreign presence). Risk connected with their geographic presence is taken into consideration, as well as compliance with group policies.

Criterion 26.6 – Legislation requires all AML/CFT supervisors, when applying RBA to AML/CFT supervision, to base supervisory activities around risk profiles prepared for covered FIs, which should be periodically reviewed – as and when there are major events or changes in the management of covered FIs (AML/CFT Law, Art. 26(8)). Such major events would include negative information of shareholders or management, supervisory information or changes in the business model.

Weighting and Conclusion

A licensing or registration obligation is in place for all sectors. Generally, covered FIs are also subject to fit and proper requirements for managers and beneficial owners, though the scope of offences that may be considered for exchange offices is too narrow. In respect of exchange offices, there is no definition of “significant shareholder” and legal provisions dealing with changes subsequent to initial licencing are not sufficiently clear. Notwithstanding the importance that is attached to currency exchanges (see Chapter 1), the higher risk of ML/TF is not linked to any licencing concerns and so this deficiency is minor.

All relevant authorities are required by legislation to apply a RBA to supervision, taking into consideration ML/FT risks at national, sectoral, and individual level. The frequency and intensity of supervision does not take account of the degree of discretion allowed under the RBA.

For IOSCO and IAIS principles, insufficient evidence has been provided to demonstrate that regulation and supervision are in line with the core principles. However, given the importance attached to these sectors, this deficiency has not been weighted heavily.

The gap in the application of preventive measures to the safekeeping and administration of cash is minor.

R.26 is rated LC.

Recommendation 27 – Powers of supervisors

In the 4th round MER, Romania was rated LC on former R.29 due to: (i) minor concerns that some supervisory authorities did not have legal authority to seek remediation of AML/CFT breaches; and (ii) a lack of clarity with powers of sanction under NOPCML rules.

The introduction to R.10 lists an activity to which the AML/CFT Law does not apply and so which is not subject to regulation and supervision.

Criterion 27.1 - Supervision for compliance by covered FIs with the AML/CFT Law is the responsibility of the NRB, FSA and the NOPCML (AML/CFT Law, Art. 26(1)). The following general powers are available to exercise supervision under the AML/CFT Law: (i) power to obtain data and information (including documents); and (ii) power to require measures to be taken (AML/CFT Law, Art. 26(4) and (5)). These powers are available also to supervise compliance with the AML/CFT Law by FIs licenced in other EEA Member States that physically operate in Romania through branches (AML/CFT Law, Art. 26(6), Art. 27(1), and Art. 28(1)). In the case of the FSA, it may also use powers available under sectoral legislation (AML/CFT, Art. 28(1)), which contain broadly the same powers.

In the case of the NBR, it may use its powers to supervise activities performed by Romanian legal persons that are credit institutions, PIs, or EMIs in another Member State without an establishment (AML/CFT Law, Art. 27(2)).

The same powers may be used by the NBR and NOPCML to supervise compliance with Regulation (EU) 2015/847 (AML/CFT Law, Article 29(1)(a) and (b)).

The NBR, FSA and NOPCML may use the same powers that are available under the AML/CFT Law to supervise implementation of the TFS obligations (GEO no. 202/2008, Art. 17(1)).

It is a contravention to obstruct supervisory activity, including failing to provide information, delaying provision of information, and provision of erroneous data and information (AML/CFT Law, Art. 43(1)(e)). A contravention may be sanctioned by a warning or fine (up to 10% of total revenue for a legal person) (AML/CFT Law, Art. 43(3)).

Criterion 27.2 – The NBR and FSA may carry out surveillance (AML/CFT Law, Regulation (EU) 2015/847 and TFS) based on information collected offsite and through onsite inspections (AML/CFT Law, Art. 27(4) and Art. 28(2) and GEO No. 93/2012 on the FSA organisation, Art. 21^{2a}). The NBR’s powers expressly extend to entities to which activities have been outsourced (AML/CFT Law, Art. 27(4)). Inspections may be carried out by the NBR or FSA or through financial auditors (AML/CFT Law, Art. 27(3), and Art. 28(4)). In the case of the FSA, Regulation no. 4/2021 regarding the control activity carried out by the FSA establishes a framework for the performance of periodic and unannounced inspections, as well as rights and obligations of parties involved in the supervisory activity. In the case of the NOPCML, inspections may be carried out at the premises of the NOPCML, covered FI or as otherwise agreed (AML/CFT Law, Art. 26 and NOPCML AML/CFT Rules, Art. 27 and following).

Criterion 27.3 – Covered FIs must make available data and information requested by the responsible supervisor to carry out specific duties (AML/CFT Law, Regulation (EU) 2015/847 and TFS). The authorised representatives, in the exercise of their duties, may take photocopies of verified documents (AML/CFT Law, Art. 26(4), Art. 27(3) and Art. 28(1)).

Criterion 27.4 – The NBR is authorised to impose a range of administrative sanctions for: (i) failure by FIs to apply “supervisory measures”; (ii) serious, repeated, or systematic failure to comply with the AML/CFT Law, but not for less serious, isolated compliance failures; (iii) initiating or continuing a business relationship or executing a transaction in violation of the AML/CFT Law; and (iv) failing to comply with Regulation (EU) 2015/847 (AML/CFT Law Art. 27(7)). This includes withdrawal of the licence granted to a covered FI (AML/CFT Law, Art. 27(9)). Authorisation to impose sanctions may be limited in respect of some breaches that are not serious, repeated, or systematic, including reporting of suspicion. The FSA and NOPCML are authorised to impose administrative sanctions for failure to comply with the AML/CFT Law, regulations or other acts issued pursuant to that law (AML/CFT Law, Art. 28(5) and Art. 43). This must consist of a warning or a fine and may also include one or more supplementary measures, including the withdrawal, endorsement, or suspension of a covered FI’s licence (AML/CFT Law, Art. 43 and Art. 44). Overall, the range of sanctions available is proportionate for dealing with greater and lesser breaches of AML/CFT requirements. The NOPCML can also apply sanctions where postal service providers fail to comply with Regulation (EU) 2015/847 (AML/CFT Law, Articles 29(1)b and 43(1)(h)) or require others to do so (AML/CFT Law, Art. 44(2)).

Weighting and Conclusion

Supervisory authorities are given broad powers to supervise FIs, including the power to conduct inspections, compel provision of documents and apply a range of administrative sanctions. Overall, the range of sanctions available is proportionate for dealing with greater and lesser breaches of AML/CFT requirements. However, it may not be possible for the NBR to impose sanctions in respect of some breaches that are not serious, repeated, or systematic, including reporting of suspicion.

The gap in the application of preventive measures to the safekeeping and administration of cash is minor.

R.27 is rated LC.

Recommendation 28 – Regulation and supervision of DNFBPs

In the 4th round MER, Romania was rated PC on former R.24 due to: (i) internet casinos and other types of casino gambling not being subject to licensing or to the AML/CFT framework; (ii) measures to prevent criminals from holding a significant interest in casinos not being comprehensive; (iii) gambling legislation not capturing beneficial owners and managers explicitly, and not covering changes post licensing; (iv) lack of a registration and AML/CFT oversight framework for TCSPs; (v) the Bar Association not fulfilling its statutory responsibilities and failure of the legal profession to engage; and (vi) sanctions issues as identified in former R.17.

R.22 lists activities to which the AML/CFT Law does not apply and so which are not subject to regulation or supervision.

Criterion 28.1 – (a) It is prohibited to carry out casino (gambling) activities without authorisation or registration (AML/CFT Law, Art. 31(1)). The carrying out of any gambling activities without a licence is punishable as a crime (GEO No. 77/2009, Art. 23).

(b) The NGO and the NOPCML have an obligation to verify if the persons who hold a management position in, or are the beneficial owners of, casinos are “suitable and competent” persons capable of protecting those entities against their abusive use for criminal purposes (AML/CFT Law, Art. 31(2)). Detailed NGO licencing powers are set out in GEO no. 77/2009 which includes, amongst other things, a requirement for the absence of a criminal conviction (crime committed with intent with a sentence of at least 2 years) of the economic operator itself and its beneficial owners and legal representatives (most often, but not always, directors) (GEO No 77/2009, Art. 15). Any changes to any information provided at the time of licensing of the casino have to be notified ex post to the NGO (GEO No 77/2009, Art. 12(2)) - within 48 hours (for online filing) or within 5 working days (for filing by post or directly at the supervisor). These licensing powers do not address senior management more generally or cases where a beneficial owner or legal representative is an associate of a criminal.

(c) Providers of casino services are subject to supervision with the AML/CFT Law by the NGO (AML/CFT Law, Art. 26(1)(c)). The NOPCML may also undertake supervision of casinos in certain cases (AML/CFT Law, Art. 26(3)). The following general powers are available to exercise supervision: (i) power to obtain data and information (including documents); and (ii) power to require measures to be taken (AML/CFT Law, Art. 26(4) and (5)). These powers are available also to supervise compliance with the AML/CFT Law by casinos licenced in other EEA Member States that physically operate in Romania (AML/CFT Law, Art. 26(6)). The GEO and the NOPCML are both empowered to supervise compliance with TFS (GEO No 202/2008, Art. 17).

Criterion 28.2 - The NOPCML is the designated competent authority for supervising compliance by all covered DNFBPs with the AML/CFT Law. Self-regulatory bodies are also designated as supervisors - to the extent that they “represent and coordinate” covered DNFBPs (AML/CFT Law, Art. 26(1)(d) and (e)). These are: (i) NUNPR (notaries public); (ii) NARB (lawyers); (iii) BELAR (certified accountants and accounting experts); and (iv) CTA (tax advisors). Self-regulatory body means unions, professional bodies or other associative forms of regulated professions which have power to regulate the activities of their members by issuing regulations and instructions on the activity and ethical conduct of members, and supervise compliance therewith (AML/CFT Law, Art. 2(n)). The NOPCML and SRBs are responsible also for supervision of implementation of TFS obligations (GEO no. 202/2008, Art. 17(1)).

Criterion 28.3 – Covered DNFBPs supervised by the NOPCML are subject to monitoring in proportion to the identification and assessment of risk indicators established in accordance with internal procedures (NOPCML AML/CFT Rules, Art. 26(3)). Whilst similar rules are not in place for SRBs, cooperation agreements concluded between the NOPCML and the SRBs provide for the application of a RBA. See c.28.5.

Criterion 28.4 - (a) Covered DNFBPs must make data and information available to their respective supervisory authority to support supervisory duties. They may take photocopies of the verified documents (AML/CFT Law, Art. 26(4)). Supervisory authorities also have a power to require measures to be taken (AML/CFT Law, Art. 26(5)). In the case of the NOPCML, inspections may be carried out at the premises of the NOPCML, covered DNFBP or as otherwise agreed (AML/CFT Law, Art. 26 and NOPCML AML/CFT Rules, Art. 27 and following). SRBs base their right to conduct on-site inspections on the same provisions of the AML/CFT Law, but this is not expressly covered since statutory provisions refer only to authorities (and not also SRBs).

The NOPCML and SRBs may use the same powers that are available under the AML/CFT Law to supervise implementation of TFS obligations (GEO no. 202/2008, Art. 17(1)).

(b) Supervisors of TCSPs have an obligation to verify if the persons who hold a management position in, or are the beneficial owners of, those TCSPs are “suitable and competent” persons capable of protecting those entities against their abusive use for criminal purposes (AML/CFT Law, Art. 31(2)). However, supervisors are not given explicit powers to address this obligation through the AML/CFT Law, relying instead on general supervisory powers that allow them to conduct ongoing assessments of reputation and integrity.

In addition, authorities responsible for authorisation, as well as SRBs, have an obligation to adopt necessary measures for specified DNFBPs (accountants, tax consultants, notaries public, lawyers, and real estate agents) to prevent persons that have been convicted of ML or TF offences (but not other offences) from holding a management position within these DNFBPs or being a beneficial owner (AML/CFT Law, Art. 31(3)). Such measures have not been adopted.

Covered DNFBPs that are legal persons are subject also to the Company Law, which permits a final court decision to deny a person the right to act as founder (but not subsequent shareholder) or director (or hold another senior position) as a complementary punishment to conviction for: (i) offences against property by breach of trust; (ii) offences of corruption, embezzlement, forgery of documents, and tax evasion; (iii) offences provided by the AML/CFT Law; and (iv) offences under the Company Law. The list of offences does not clearly cover TF and some other categories of offence that are designated by the FATF.

Moreover, the following controls are exercised by SRBs in respect of members. These do not apply to covered professionals that are not members of a professional body or which hold a foreign qualification, e.g., accountants and tax advisors.

Lawyers – a person cannot be a lawyer when they are convicted through a final court order for an act provided by criminal law which renders them “unworthy” of being a lawyer. At the time of the onsite visit, the term “unworthy” was not defined¹⁰⁷ (Law no 51/1995 on the organisation and practice of the legal profession, Art. 14(a) and Art. 26(d)).

In the case of law firms (including partnerships and companies), these must be owned and managed by persons who are qualified to practice law (Law no 51/1995 on the organisation and practice of the legal profession, Art. 5). Nothing prevents a person who is an associate of a criminal from being a lawyer.

Notaries public – a person cannot become a notary if they hold a criminal record resulting from the intentional commission of an offence; this is true also for the commitment of a crime at a later stage, where the designation as notary public would be terminated by the MoJ (Law No 36/1995 on Notaries, Art. 22(1) and Art. 41(1)). Notaries cannot operate as firms.

In addition, a notary public must be of good repute. Inter alia, a notary will enjoy a good reputation if they: (i) behave appropriately in society; (ii) refrain from any act or deed likely to compromise their dignity, that of the profession and the institutions to which they belong; and (iii) have professional relations based on respect and good faith (UNNPR Statute, approved by Congress Resolution No. 10/2014, as amended and supplemented, Art. 18 (1) and (2)). These provide an adequate basis for preventing an associate of a criminal from being a notary.

Accountants – a person cannot be admitted to the profession if they hold any conviction which, according to the legislation in force, prohibits the right to manage and administer commercial companies (Government Ordinance 65/1994, Art. 4), i.e. (i) offences against property by breach of trust; (ii) offences of corruption, embezzlement, forgery of documents, and tax evasion; (iii) offences provided by the AML/CFT Law; and (iv) offences under the Company Law (Company Law, Art. 6(1)). The list of offences does not clearly cover TF or all categories of offence that are designated by the FATF.

In the case of accounting firms, the majority of owners must be members of the profession (Government Ordinance 65/1994, Art. 9(1)). No similar limitations are placed on directors of such firms. Nothing prevents a person who is an associate of a criminal from being an accountant.

Tax advisors – a person convicted for offences punishable under tax, financial-accounting, customs, or financial discipline laws may not be authorised by the CTA to carry out the activity of fiscal consultancy (OG 71/2001, Art. 4(1) and (2)). The list of offences does not clearly cover ML, TF or all categories of offence that are designated by the FATF. Membership of the SRB shall be withdrawn following the final conviction of a tax consultant for crimes: (i) against humanity; (ii) against the State or against authority; (iii) against the service or in connection with the service, which impede the course of justice; (iv) covering forgery; (v) committed with intent; and (vi) that are economic crimes provided for by special laws which would make membership incompatible with the exercise of the capacity of tax consultant (Decision No 3/2022 for the approval of the organisation and operation regulation of the CTA, Art. 3 and 12(1)). Firms of tax advisors need

¹⁰⁷ As a result of the effects of Constitutional Court Decision no. 230/2022, Art. 14(a) was repealed on 11 July 2022. A definition was added to the law on 15 January 2023.

have only one shareholder and director who is a tax consultant (OG 71/2001, Art. 9) and so may operate with owners and controls who are criminals. The effect of this gap is mitigated to some extent by a requirement for firms to be authorised by the Chamber (OG 71/2001, Art. 9). Nothing prevents a person who is an associate of a criminal from being a tax advisor.

There are no SRBs dealing with: (i) real estate agents; (ii) DPMS; or (iii) TCSPs - excluding lawyers and accountants providing services for legal persons and legal arrangements. In the particular case of fiducia established under Romanian law (see R.24) (and not trusts established under foreign law), only the following may act as trustee: (i) credit institutions, investment and investment management companies, financial investment services companies, insurance and reinsurance companies; and (ii) notaries public and lawyers (Civil Code, Art. 776).

In summary: (i) there are no sectoral measures in place to prevent criminals or their associates holding interests or management functions in real estate agents or DPMS; (ii) sectoral measures in place for lawyers do not clearly cover ML, TF or all categories of offence that are designated by the FATF and do not deal with associates of lawyers that are criminals; (iii) there are sectoral measures in place to prevent criminals or their associates becoming notaries; (iv) sectoral measures in place for accountants do not clearly cover TF or all categories of offence that are designated by the FATF, do not apply to directors of accounting firms, and do not deal with associates of accountants that are criminals; (v) sectoral measures in place for tax advisors do not clearly cover ML, TF or all categories of offence that are designated by the FATF, do not deal adequately with firms of tax advisors, and do not deal with associates of tax advisors that are criminals; and (vi) supervisors of TCSPs rely on general supervisory powers to conduct ongoing assessments of reputation and integrity of persons holding interests or management functions, which are not conducted for all TCSPs or on an ex-ante basis. Sectoral measures do not apply to covered professionals that are not members of a professional body or which hold a foreign qualification, e.g., accountants.

Whereas measures are in place under the Company Law to prevent criminals from founding legal persons or holding a senior management function, these measures do not clearly cover TF or all categories of offence that are designated by the FATF, and do not apply only to shareholders other than the founding shareholders.

c) The same sanctions apply to covered DNFBPs as to covered FIs – see NOPCML description above under c.27.4. Whilst SRBs cannot apply sanctions under AML/CFT legislation they can, where appropriate, apply disciplinary sanctions to members and are obliged to report the results of their inspections to the NOPCML-FIU (AML/CFT Law, Art. 26(2)), which may impose sanctions.

For example, the Rules of Organisation and Functioning of the CTA (tax advisors) contain express provisions on a number of acts which constitute disciplinary offences, and which can be sanctioned by the professional body, following an administrative disciplinary investigation, including suspension (three months to one year) or exclusion from the profession (Art. 53(1) and Art. 54). For example, it is a disciplinary offence to harm the reputation and interests of the professional body.

Criterion 28.5 - (a) and (b) Legislation requires all AML/CFT supervisors, when applying a RBA to AML/CFT supervision, to clearly understand ML/FT risks, have access to relevant information, and base supervisory activities around risk profiles prepared for covered entities (which should be periodically reviewed) (AML/CFT Law, Art. 26(8)). It does not mandate the application of such a RBA.

The intensity and frequency of supervisory actions carried out by the NOPCML in relation to the prevention and combating of ML and TF shall be established in proportion to the identification and assessment of risk indicators established in accordance with internal procedures (NOPCML AML/CFT Rules, Art. 26(3)). The NOPCML has procedures for assessing risks connected to different obliged entities, taking into account individual, sectoral and national risks, which determine the frequency of supervisory actions (Operational procedure P05.01 – risk-based surveillance activity, section 5.2). Procedures also explain how risk determines the intensity of supervision (Operational procedure P05.02 – control activity, Art. 21).

The adequacy of AML/CFT internal controls, policies and procedures is taken into account by the NOPCML in its application of its RBA to the extent that, if a supervised entity has been previously inspected on-site, the score for the “compliance risk indicator” increases if there have been deficiencies in internal controls and procedures. Otherwise, adequacy of controls, policies and procedures are not taken into account in the application of a RBA.

Whilst similar internal procedures are not in place for the NGO or SRBs, cooperation agreements concluded between the NOPCML and the SRBs do provide for the application of a RBA. However, these cooperation agreements cannot require the application of an RBA and do not address the assessment of adequacy of controls, policies of procedures (c.28.5(b)).

Weighting and Conclusion

Whilst a framework for market entry and supervision of DNFBPs is in place, it remains hindered by numerous shortcomings. In particular: (i) measures do not ensure that criminals and their associates are prevented from all sectors and are, at times, subject to undue conditions; and (ii) sectoral measures do not apply to covered professionals that are not members of a professional body or which hold a foreign qualification, e.g., accountants.

DNFBP supervisors are designated, nonetheless, SRBs lack express powers to undertake on-site AML/CFT inspections. RBA to supervision is required only for the NOPCML, and the requirement does not adequately address the adequacy of controls, policies, and procedures.

The gap in the application of preventive measures to DNFBPs is considered minor. **R.28 is rated PC.**

Recommendation 29 - Financial intelligence units

The current R.29 was previously assessed under the old R.26 in the 2014 MER which was rated PC due to the following deficiencies identified: (i) the 30 day period for the provision of additional information by obliged entities was too lengthy; (ii) the law provided that the NOPCML-FIU may only disseminate information to LEAs when it ascertains the existence of solid grounds of ML/FT; (iii) the composition and functions of the Board may give rise to concerns regarding potential undue influence or interference; (iv) absence of clear confidentiality obligations applicable to Board members; and (v) the confidentiality obligations of NOPCML_FIU personnel did not extend beyond five years after termination of employment. Since the last MER, the AML/CFT Law was amended to transpose relevant EU Directives and address the deficiencies identified in the previous mutual evaluation round.

Criterion 29.1 – The NOPCML-FIU is an independent and autonomous body which is established with responsibility for acting as a national centre for receipt and analysis of suspicious transaction reports and other relevant information related to ML, associated predicate offences and TF, and dissemination of its analysis (AML/CFT Law, Articles 1(2), 6, 34 and 39(3)(f)).

Criterion 29.2 – The NOPCML-FIU serves as the central agency for the receipt of reports filed by OEs, including:

(a) STRs filed by obliged entities (AML/CFT Law, Art. 6 and 39);

(b) CTRs in the equivalent of EUR 10 000 or more in any currency (AML/CTF Law, Art. 7). Credit institutions and FIs have additional responsibility to report external transfers to and from accounts in any currency equivalent of EUR 10 000 or more (AML/CTF Law, Art. 7(3)). For money remittance activity the reporting threshold is equivalent to EUR 2 000.

Criterion 29.3 – In relation to obtaining and accessing information:

(a) To perform its functions the NOPCML-FIU has the competence to request information from obliged entities (AML/CFT Law, Art. 33(1) and (2)).

(b) The NOPCML-FIU has the competence to request and access information from domestic public authorities, including a wide range of financial, administrative and law enforcement information. In addition to the right to request the information stipulated in Art 33(1) in the AML/CFT Law the NOPCML-FIU according to Art 39(5) has direct and timely access to financial, tax, administrative and other information from LEAs and criminal prosecution bodies. Art. 8 in the Government Ordinance 9/2021 provides that the competent authorities have the obligation to respond immediately to reasoned requests for information in the field of law enforcement by the NOPCML-FIU when requests for information are necessary to prevent, detect and control of ML or TF.

Criterion 29.4 - (a) NOPCML-FIU is empowered to conduct operational analyses, which focuses on individual cases and specific objectives, or on appropriate information depending on the type and volume of information received and on the intended use of the information after its communication (AML/CFT Law, Art.39(4). Although the definition of the operational analysis in Art 39(4) in the AML/CFT Law is indefinite and does not cover the use of obtainable information, the provisions of Art 39(3) of the AML/CFT Law ensures the reception of reports by the OEs, the right to request data and information from wide variety of entities, analyse and process the information for the purpose of preventing and combating ML, TF and criminal offences generating goods for subject to ML and TF. The Order of the President of the NOPCML-FIU No 241/2021 further details when and how the operational analysis is conducted.

(b) NOPCML-FIU is empowered to conduct strategic analysis, which address recurring trends and practices of ML and TF. Although AML/CFT Law does not explicitly indicate that all the available and obtainable information including data, which other competent authorities may hold could be used for the strategic analysis, there are no restrictions stipulated either (AML/CFT Law, Articles 33(1), 34 and 39(4).

Criterion 29.5 – The NOPCML-FIU has the obligation to inform the POHJCC if it identifies indications of ML or TF, the ISS if it suspects TF and criminal investigation bodies if it finds evidence of offenses other than ML or TF (AML/CFT Law, Art. 34 (1-3)). Furthermore, the NOPCML-FIU may, on its own initiative, submit information to the competent authorities or to the public institutions, on the non-compliance of obliged entities (AML/CFT Law, Art. 34 (4)). General objectives of the NOPCML-FIU allow to disseminate the results of the analysis to the competent authorities (AML/CFT Law, Art. 39 (3f)). The national competent authorities have the right to request information from the NOPCML-FIU and the latter has the right to submit the information or motivate the refusal to provide the information (AML/CFT Law, Art 35). Government Ordinance 9/2021 also sets that the exchange of financial information or financial analysis

between the competent authorities of Romania and competent authorities in another Member State of the EU shall be performed by secure electronic means (Art. 10(2)).

The Law 51/1991 on national security of Romania provides terrorist acts, as well as the initiation of or any support to any activities the purpose of which is the perpetration of such deeds as a threat to national security. Order 70/2022 by the NOPMCL-FIU stipulates that the information exchange between the NOPCML-FIU and the state bodies with attributions in the field of national security is carried out via military mail or through the secure network of Anti-Terrorist Operational Coordination Centre (CCOA).

The AML/CFT Law Art. 36(1) clearly provides that the NOPCML-FIU may exchange information with foreign institutions having similar functions, or with other competent authorities from other Member State or third countries through the secured channels. Obligated entities are required to set up secure systems, which allow them to respond to the requests by the NOPCML-FIU and other competent authorities in confidential manner (AML/CFT Law Art. 33(3)). Although, there is no legal requirement for the use of dedicated, secure, and protected channels for the exchange of information related to ML/TF with national competent authorities, the NOPCML-FIU is using the secure channels managed by RIS, Extranet managed by MDA or the support of the military post services for physical delivery of information. Dissemination of information to the POHCCJ is done by electronic means, ensuring confidentiality, security and integrity of data and information. Technically, the solution includes end-to-end information encryption.

Criterion 29.6 – NOPCML-FIU is obliged to protect its information in following way:

(a) The provisions related to classified information are set by the Law 182/2002 on the protection of classified information (Law 182/2002). Law 182/2002 provides that the institutions holding classified state information are responsible for the elaboration and application of the procedural measures for the physical protection and protection of the personnel who has access to the information in this category (Art. 23 (1)). Within the authorities, public institutions and economic agents that hold classified information, special departments are organized for their evidence, processing, processing, storage, handling and multiplication, in safe conditions (Law 182/2002, Art. 41 (1)). The NOPCML-FIU processes and uses data and information in a confidential manner and in compliance with the security measures for the processing of personal data (AML/CFT Law Art. 36(1)). The employees of the NOPCML-FIU are prohibited to use the confidential information received during the activity, except under the law and that the obligation is maintained indefinitely (AML/CFT Law Art. 41(2)). Furthermore, the staff of the NOPCML-FIU is prohibited to use the classified information for personal gain (AML/CFT Law Art. 41(3)). The violation of these confidentiality obligations shall be a criminal offense and shall be punished by imprisonment from 6 months to 3 years, or by a fine, if the act does not constitute a more serious criminal offense (AML/CFT Law, Art.47(1)).

(b) Law 182/2002 provides that the institutions holding or using classified information shall keep a signed record of clearances granted to staff (Art. 10 (2)) and this is applicable to the NOPCML-FIU. For the performance of their duties the NOPCML-FIU staff shall hold clearances to access confidential information issued by the President of the NOPCML-FIU, and upon need-to-know basis the permits or clearances to access classified information approved by the competent institutions (Government Decision (GD) no. 585/2002 Art. 33 and 141. The President of NOPCML-FIU is empowered to issue, in accordance with Article 141 of GD No. 585/2002, the security certificate or the authorisation for access to classified information. Pursuant to Article 35 of GD No. 585/2002, all NOPCML-FIU employees are required to sign a confidentiality statement.

Government Decision 585/2002 Art 35 (1) provides that persons to whom security clearances or access permits have been issued shall be instructed, both upon receipt and on a regular basis, as to the content of the regulations on the protection of classified information. Each individual has to sign the confidentiality commitment by which they acknowledge the legal provisions regarding the protection of confidential and classified information. The operational procedures of the NOPCML-FIU provide that training activities of the staff are recorded in the individual training sheets. The obligation to maintain the confidentiality of the information during the activity in the NOPCML-FIU as well as the prohibition to use that information for personal use are stipulated in the AML/CFT Law (AML/CFT Law, Art. 41(2) and (3)). Sanctions are foreseen for the breaches (see above point (a)).

(c) (The internal database of the NOPCML-FIU used to process and manage financial information is a closed system and not connected to Internet. Law 182/2002 provides the regulation to limit the access to the premises and IT infrastructure, where classified information is stored or accessed only to approved cases (Art. 11). GD No. 585/2002 also provides restrictions to IT systems and premises where classified information is stored and handled. Order of the NOPCML-FIU president No. 79/2022 regulates and limits the access to the premises of the NOPCML-FIU and Orders No. 128/2011 and 192/2011 regulate the restricted access to the IT systems.

Criterion 29.7 – In relation to operational independence and autonomy:

(a) NOPCML-FIU is established by the law as an operationally and functionally independent and autonomous legal body (AML/CFT Law Art. 39(1)). The President and the Vice-President of the NOPCML-FIU are appointed by Government decision for a 4-year period, which can be extended once. The NOPCML-FIU has the authority and powers to carry out its functions freely, including the autonomous decision to analyse, request and/or forward or disseminate specific information (AML/CFT Law, Chapter IX).

(b) The NOPCML-FIU may conclude protocols and/or cooperation agreements with the national competent authorities, as well as with other national or international institutions with similar responsibilities (AML/CFT Law Art. 39 (7); Art 38¹ (6)). The NOPCML-FIU has the right to conclude international treaties at departmental level or initiate the conclusion of international treaties at the state or governmental level in its field of responsibility (Governmental Decision 491/2021 Art. 1 (4)).

(c) The NOPCML-FIU is an independent administrative type of FIU subordinated to the MoF. The NOPCML-FIU has distinct core functions, which are stipulated in the AML/CFT Law (AML/CFT Law, Chapter IX).

(d) The President and the Vice-President of the NOPCML-FIU are appointed by Government decision for a 4-year period, which can be extended once (AML/CFT Law Art. 40 (2-3)). Appropriate resources are allocated for the activities of the NOPCML-FIU, including for cooperation with other FIUs, for implementing state-of-the-art technologies for comparing data with similar institutions anonymously (AML/CFT Law Art. 41 (11)). The NOPCML-FIU prepares and substantiates expenditure proposals for its own budget and submits them to the MoF. The financing of the current and capital expenditures of the NOPCML-FIU is ensured in full, from the state budget, through the budget of the MoF (Government Decision 491/2021 Art. 2 (1)).]

Criterion 29.8 – The NOPCML-FIU, in its capacity as the financial intelligence unit of Romania, is member of the Egmont Group since May 2000.

Weighting and Conclusion

The NOPCML-FIU is provided with all the critical powers and performance of its core functions. It also has all the requisites in place with regard to operational independence and autonomy. The only minor shortcoming is related to the lack of explicit requirement to use dedicated, secure, and protected channels for the disseminations of its analysis and communicating with national competent authorities. (c.29.5). For these reasons, **R.29 is rated LC**.

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

The current R.30 was previously assessed under the old R.27 in the 2014 MER which was rated LC due to the deficiencies related to effectiveness.

Criterion 30.1 – Romania has range of authorities that have responsibility investigating ML, associated predicate offences and TF offences that allow proper investigation of these offences, within the framework of national AML/CFT policies. AML/CFT Law regulates the national framework for preventing and combating ML and TF and foresees cooperation between relevant authorities (AML/CFT Law, Art. 1(1) and 1¹).

The criminal investigation bodies are: a) the public prosecutor; b) criminal investigation bodies of the judicial police; and c) special criminal investigation bodies (CPC, Art 55). In the exercise of the criminal investigation function, the prosecutor and the criminal investigation bodies collect the necessary evidence to ascertain whether there are grounds for indictment (CPC, Art.3(4)).

The Police are the central unit for preventing and detecting crime through different directorates (see para 1.4.2 Legal and institutional framework). The main structures that investigate ML within the Police are the Directorate for Combating Organized Crime and the Directorate for Investigating Economic Crime.

The POHJCC investigates ML cases through: (i) offices attached to the courts; (ii) the military prosecutor's offices; (iii) DIOCT; and (iv) NAD. The POHJCC through DIOCT is the competent authority to investigate TF offences. Division of competences/jurisdiction is as follows:

- *NAD* investigates and prosecutes following corruption offences and ML: (a) if corruption offence exceeds EUR 200 000 or if the value of the sum or of the goods which represent the object of the corruption offence exceeds EUR 10 000 regardless of the capacity (status) of the offender; (b) corruption offence is committed by a person who has one of the special capacities (status) named in the Art. 13(1)(b) of GEO no. 43/2002 (deputies; senators; the Romanian members of the European Parliament; the member appointed by Romania within the EC; Government's members; state secretaries; counsellors of the ministers; the judges and prosecutors; etc.) regardless of the value of the material damage or of the value of the sum or of the goods which represent the object of the corruption offence; (c) offences against the financial interests of the EU; (d) the offences referred to in Articles 246 (diversion of public tenders), 297 (abuse in office) and 300 (abuse of position) of the CC, when a damage exceeding EUR 1 000 000 has been caused (Law no. 78/2000 on preventing, discovering and sanctioning corruption offences, Art. 13(1)-(3)).
- *DIOCT* investigates and prosecutes predicate offences (e.g., embezzlement theft, aggravated theft, robbery, types of fraud, human trafficking; child pornography, offences against state security; drug trafficking¹⁰⁸. etc.) and ML, if they were within the scope of an organized criminal

¹⁰⁸ For instance, drug trafficking falls only under the competence of DIOCT. If, during the investigations, a corruption crime is committed related to this case (e.g., bribing border officer in order to get in/out of

group regardless of the person's capacity (status). DIOCT alone deals also with TF investigations and prosecutions (GEO 78/2016, Art.11(1)(1)).

- *Prosecutors' Offices attached to Tribunals or courts of first instance* investigates and prosecutes ML in following cases: a) if investigated as an autonomous offence or b) the ML is investigated with the predicate offence among those given to the jurisdiction of the prosecutor's office attached to a court of first instance or the prosecutor's office attached to a Tribunal (e.g. a corruption offence that do not fall under the jurisdiction of the NAD) (CPC, Art.56 (6), with reference to CPC, Art. 36(1)).
- *Prosecutors' Offices attached to Appellate Courts* investigates and prosecutes predicate offences and ML committed by a person who has special capacities (provided that the predicate offence does not fall under the jurisdiction of the NAD or the DIOCT), e.g. judges of first instance courts, tribunals and prosecutors of prosecutor's offices operating attached to/for the purposes of these courts; lawyers, notaries public, bailiffs, etc. The competence to prosecute cases concerning ML offences committed belongs, irrespective of the nature of the predicate offence, to the prosecutor's office attached to the court of appeal when offence is committed by judge from courts of first instance, tribunals, military tribunals or by prosecutor from prosecutors' offices attached to these courts (CPC, Art.56(6), with reference to CPC Art. 39 (1)(c)-(g) and Law No. 49/2022 on the dismantling of the Section for investigating criminal offences within the judiciary (Law No. 49/2022), Art. 3(2)).
- *The POHJCC, Criminal Prosecution and Forensic Section (SUP)* (provided that the predicate offence does not fall under the jurisdiction of the NAD or the DIOCT) - ML or predicate is committed by a member of the Senate, a member of the Chamber of Deputies, a member of the European Parliament, members of the Government, judges of the Constitutional Court, members of the Superior Council of Magistracy, judges of the High Court of Cassation and Justice and prosecutors of the POHJCC, judges of the Courts of Appeal and the Military Court of Appeal, as well as prosecutors of the prosecutor's offices attached to these courts (CPC, Art. 56 (6), with reference to CPC, Art. 40(1) and Law No. 49/2022), Art. 3(1)).
- *Military prosecutors' offices* - ML offenses committed by the military are investigated and prosecuted by the military prosecutors. Military prosecutors from military prosecutors' offices or from military departments of prosecutors' offices conduct the criminal investigation according to the jurisdiction of the prosecutor's office to which they belong, in respect of all participants in the commission of offenses committed by the military, regardless of their status. (CPC, Art. 56(4) and (5)).

Criterion 30.2 - Law enforcement investigators (who in Romania may be prosecutors) of predicate offences are authorised to pursue the investigation of any related ML/TF offences during a parallel financial investigation so far as the prosecution department has authority to do so as described under c.30.1. There is no explicit requirement for a parallel investigation to be undertaken but at the same time nothing precludes authorities from conducting them (see IO.7 for effectiveness). The CPC does not provide for parallel financial investigations specifically so that all investigations, including financial investigations alongside or in the context of, a (traditional) criminal investigation into ML, TF and/or predicate offence(s), are carried out as

Romania the drugs) then DIOCT can investigate the bribery crime based on Art. 43 of CPC and Art. 11(1)(5) Government Emergency Ordinance no. 78/2016.

part of the criminal proceedings by the prosecutor and/or criminal investigation bodies, so far as they have the authority to do so as set out in the table above.

With a view to carrying out financial investigations, anti-fraud specialists working in the prosecutors' offices, appointed according to the provisions of Article 116(5) of the Law no. 304/2004 on judicial organisation may be called upon in relation to identifying assets and valuables (connected to the facts investigated and persons under investigation in the criminal file) which will be subject to freezing orders (CPC, Art.306(7)). This provides that specialists in the economic, financial, banking, customs, IT and other fields may be appointed within the prosecutors' offices by order of the Prosecutor General of the POHJCC for the purpose of clarifying technical aspects of a criminal investigation.

Criterion 30.3 – Art. 249 (1) of the CPC: the prosecutor, during the criminal investigation, the Preliminary Chamber Judge or the Court, *ex officio* or upon request by the prosecutor, during preliminary chamber procedure or throughout the trial, may order asset freezing, by a prosecutorial order or, as the case may be, by a reasoned court resolution, in order to avoid concealment, destruction, disposal or dissipation of the assets that may be subject to special or extended confiscation. The criminal investigation body is obliged to collect the necessary evidence to identify the assets and values subject to special confiscation and extended confiscation, according to the CC (CPC, Art. 306(7)). No specific LEA is designated for this task as it is a general duty of all investigative bodies. As regards the establishment of the seizure, identification, and tracing of property subject to special or extended confiscation, see c.4.2. a) and b). The provisions of Article 249 (1) of the CPC on asset freezing orders apply to all categories of assets, regardless of their nature, including VAs.

Criterion 30.4 – In Romania only LEAs (Police or prosecution) are competent to handle financial investigations of predicate offences.

Criterion 30.5 – NAD is the specialised anti-corruption LEA designated to investigate ML offences arising from, or related to, corruption offences under R.30. It has sufficient powers to identify, trace, and initiate freezing and seizing of assets. It is a prosecution authority functioning on the basis of the GEO no. 43/2002 but independent of the courts and other prosecution offices, as well as with the other public authorities. NAD has sufficient powers to identify, trace, and initiate freezing and seizing of assets (CPC, Art.249). NAD is not investigating TF cases as this is solely the competence of DIOCT as described above under c.30.1.

Weighting and Conclusion

R.30 is rated C.

Recommendation 31 - Powers of law enforcement and investigative authorities

The current R.31 was previously assessed under the old R.28 in the 2014 MER which was rated C.

Criterion 31.1 – The competent authorities conducting investigations into ML (Police or prosecution), associated predicate offences and TF in Romania are described under c.30.1. These authorities can obtain access to all necessary documents and information for use in those investigations, and in prosecutions and related actions, which include powers to use compulsory measures for: the production of records held by FIs, DNFBPs and other natural or legal persons; the search of persons and premises; taking witness statements; seizing and obtaining evidence; undercover operations; intercepting communications; accessing computer systems and controlled delivery. These measures are as follows:

(a) Police officers and prosecutors have authority to use wide range of surveillance and investigation special methods that enable the production of all necessary documents and information held by FIs, DNFBBs and other natural or legal persons for use in those investigations, prosecutions and related actions (CPC, Art.1(1), 138(1) and (9)).

The prosecutor, based on a prior approval from the Judge for Rights and Liberties, may request a credit institution, or any other institution holding data regarding the financial status of a person, to provide it if there is probable cause in respect of the commission of an offence, and there are grounds to believe that the requested data represent evidence (CPC, Art.153(1)). The relevant institution is obliged to make the required data available immediately (CPC, Art 153(3)). Police officers need to ask the prosecutor for the production of records held by FIs, DNFBBs and other natural or legal persons by addressing a formal request, which, if it is properly substantiated, determines the next step – the seeking of a judge’s permission to obtain the records.

(b) Searches may be executed on: (i) homes (CPC Art.159(1-2)); (ii) persons (CPC Art.61(2)); (iii) computers (CPC Art.168), or (iv) vehicles (CPC, Art.156(1)).

(c) Section 4 of the CPC provides rules for the examination of witnesses. Any person who has knowledge of facts or factual circumstances which constitute evidence in the criminal case may be heard as a witness (CPC, Art.114(1)). Witnesses are obliged to appear before the judicial body to take an oath or solemn declaration before the court and to tell the truth on facts or circumstances of fact which are the subject of proof in the case in which he was summoned (CPC, Art.114(2)a-c) and Art.116(1)). False testimony is punishable by imprisonment from 6 months to 3 years or by a fine (CC, Art.273).

(d) During the criminal investigation, the criminal investigation body collects and administers evidence both in favour of and against the suspect or the defendant, ex officio or upon request (CPC, Art 100(1)). During the trial, the court takes evidence at the request of the public prosecutor, the aggrieved person or the parties and, alternatively, of its own motion, of its own motion, when it considers it necessary for the formation of his conviction (CPC, Art.100(2)). Competent authorities have power to collect any evidence connected to offence, including to conduct domiciliary search for collecting the evidence (CPC, Art.159), as well as to seize the evidence (objects and document that are connected to offence) (CPC, Art.159(13)).

Criterion 31.2 – Competent authorities conducting investigations are able to use a wide range of investigative techniques for the investigation of ML, associated predicate offences and TF, including undercover operations, intercepting communications, accessing computer systems and controlled delivery as follows:

(a) CPC general provisions contemplate the use of undercover investigators and informants and authorized participation in specific activities use by competent authorities conducting investigations of ML, related predicate offences and TF (CPC, Art. 138(1)(g)(h) and Art. 138(10)). Authorized participation in specific activities means the commission of acts similar to the objective component of a corruption offence, the performance of transactions, operations or any other kind of arrangement relating to an asset or to a person who is presumed missing, a victim of trafficking in human beings or of kidnapping, the performance of operations involving drugs, as well as the providing of services, based on an authorization from the judicial bodies of competent jurisdiction for the purpose of obtaining evidence (CPC, Art.138(11)).

The use of undercover investigators and informants and authorized participation in specific activities may be ordered by the prosecutor supervising or conducting the criminal investigation, for a time period and in accordance with the rules specified in CPC (CPC, Art. 148 and 150).

(b) Competent authorities conducting ML, predicate offences and TF investigations are able to use different surveillance or investigation special methods as per CPC Art.138, including the following methods: (i) wiretapping; (ii) video, audio or photo surveillance; (iii) tracking or tracing with the use of technical devices; (iv) withholding, delivery or search of mail deliveries and obtaining data generated or processed by providers of public electronic communication (CPC, Art. 138(1)(a)(c)(d)(f)(j)).

Electronic surveillance is ordered by the Judge for Rights and Liberties only when the specific requirements in the CPC are cumulatively met (CPC, Art.139(1)) and it may be ordered in case of offences against national security stipulated by the CC and by special laws, as well as in case of drug trafficking, weapons trafficking, trafficking in human beings, acts of terrorism, ML, counterfeiting of currency or securities, counterfeiting electronic payment instruments, offences against property, blackmail, rape, deprivation of freedom, tax evasion, corruption offences and offences associated with corruption, offences against the EU's financial interests, offences committed by means of computer systems or electronic communication devices, or in case of other offences in respect of which the law sets forth a penalty of no less than 5 years of imprisonment (CPC, Art.139(2)).

(c) Surveillance or investigation special methods include also accessing a computer system (CPC, Art.138(1)(b)), Art.138(3) and Art.168(1)).

During the criminal investigation, a Judge of competent jurisdiction may order the conducting of a computer search. The order is granted upon a request by the prosecutor, when the investigation of a computer system or of a computer data storage medium is necessary for the discovery and collection of evidence (CPC, Art.168(2)).

(d) Surveillance or investigation special methods also include controlled delivery (CPC, Art. 138(1)(i) and Art.138(12)). A controlled delivery may be authorized by the prosecutor supervising or conducting the criminal investigation, through a prosecutorial order, upon request (CPC, Art 151(1-3)). A prosecutor establishes, coordinates and controls the performance of a controlled delivery (CPC, Art.151(6)) and the performance of the controlled delivery does not itself constitute an offence (CPC, Art.151(7)).

Criterion 31.3 – Romania has mechanisms in place:

(a) to identify, in a timely manner, whether natural or legal persons hold or control accounts

Credit institutions, PIs and EMIs are obliged to communicate on a daily basis, at the request of the central fiscal body, for each holder subject to the request, all turnovers and/or balances of accounts opened with them, as well as information and documents on the operations carried out through those accounts (Fiscal Procedure Code, Art. 61(1) and (2)).

NOPCML-FIU sends monthly reports to the Fiscal Administration of cash transactions, reports on external transfers to and from accounts as well as reports on remittance activities received from obliged entities that have the obligation to transmit the respective information to the NOPCML-FIU (Fiscal Procedure Code, Art. 61(3)).

Based on the data and information received, the Fiscal Administration manages the Central Electronic Register for payment accounts and bank accounts identified by IBAN (Fiscal Procedure Code, Art. 61¹(1)). The register foreseen in Art. 61¹, para. (1) allows the timely identification of all natural or legal persons holding or controlling payment accounts and bank accounts identified by the IBAN, as defined in Regulation (EU) no. 260/2012 of the European Parliament and of the

Council or securities held at a credit institution on the territory of Romania (Fiscal Procedure Code, Art. 611 (2)). LEAs have direct access to this register.

(b) to ensure that competent authorities have a process to identify assets without prior notification to the owner.

Competent authorities have a process to identify assets without notification to the owner. No such query involves the prior notification of the natural or legal person involved (see further details under c.4.2)

Criterion 31.4 - Competent authorities (POHCCJ, criminal investigation bodies and RIS) that conduct investigations of ML, associated predicate offences and TF can ask for all relevant information held by the NOPCML-FIU who is obliged to disseminate it to them upon their request (AML/CFT, Art.35).

Weighting and Conclusion

R.31 is rated C.

Recommendation 32 – Cash Couriers

The current R.32 was previously assessed under the old Special Recommendation (SR) IX in 2014 which was rated PC due to the following technical deficiencies: (i) no power to stop and restrain currency or bearer negotiable instruments when there is a suspicion of ML or TF; (ii) the NCA had no power to stop or restrain cash for situations where there was a false declaration (or an incomplete or incorrect information was provided); (iii) It remained unclear whether the systems for reporting cross border transactions was subject to strict safeguards to ensure the proper use of the information or data that is reported or recorded regarding the custom data base; (iv) sanctions were not proportionate and dissuasive; and (v) no procedures implemented to ensure that the public was aware that the cross-border transportation of cash exceeding the threshold was to be declared.

Criterion 32.1 - Carriers who carry *cash* of a value of EUR 10 000 or more shall declare that cash to the NCA when they are entering or leaving the EU via Romania and make it available to NCA for control (Regulation (EU) 2018/1672¹⁰⁹, Art. 3). “*Cash*” means: (i) currency; (ii) bearer-negotiable instruments; (iii) commodities used as highly liquid stores of value; (iv) prepaid cards (Regulation (EU) 2018/1672, Art 2(a)). Where unaccompanied *cash* of a value of EUR 10 000 or more is entering or leaving the EU via Romania, the NCA may require the sender or the recipient of the *cash*, or a representative thereof, to make a disclosure declaration within a deadline of 30 days (this includes cross-border transportation through mail and cargo) (Regulation (EU) 2018/1672, Art. 4). The Regulation (EU) 2018/1672 is directly applicable and in addition transposed to Romanian law through Art. 156(3) of the Regulation for the application of the Romanian Customs Code¹¹⁰. Information material is published at the NCA website¹¹¹ Romania has not supplemented Regulation (EU) 2018/1672 requirements and thus relevant obligations to declare or disclose apply only when *cash* is entering or leaving the EU via Romania.

¹⁰⁹ Regulation (EU) 2018/1672 of the European Parliament and of the Council of 23 October 2018 on the control of cash entering or leaving the Union and repealing Regulation (EC) no. 1889/2005.

¹¹⁰ Regulation for the application of the Romanian Customs Code), approved by Government Decision no. 707/2006 with subsequent amendments and completions.

¹¹¹ <https://www.customs.ro/info-publice/protejarea-frontierei/controlul-numerarului>

Criterion 32.2 and 32.3 – Please see the analysis under c.32.1. Deficiencies identified under c.32.1 apply. The forms written in Romanian and English can be found on the website of the NCA¹¹².

Criterion 32.4 – Upon the discovery of a false declaration or disclosure of currency or BNIs or failure to declare or disclose them, NCA has authority to request and obtain further information from carrier with regard to the origin of the currency or BNIs, and their intended use based on the Article 15 of Regulation (EU) 2018/1672.

Criterion 32.5 – Any false, incomplete or incorrect declaration, or the absence of a declaration (as laid down in Regulation (EU) 2018/1672, Art.3 and Art.4) is punishable with a fine of RON 3 000 to 50 000 (approximately EUR 600 to 10 000), but not more than 60% of the value of undeclared cash, any failure to fulfil (Government Decision 707/2006 approving the Regulation for the application of the Romanian Customs Code with subsequent amendments and completions, Art. 653, para. 1¹). Although these sanctions can be considered proportionate (TBD), they are not deemed to be dissuasive.

Criterion 32.6 – Information obtained through the declaration/disclosure process is available to the NOPCML-FIU through a system whereby the NOPCML-FIU is notified about suspicious cross-border transportation incidents by the NCA. The NCA electronically records the information obtained in accordance with the Regulation (EU) 2018/1673 Articles 3, 4, 5 (3) and 6 and transmits it to the NOPCML-FIU in accordance with the technical rules referred to in the Regulation Article 16 (1) (c) (via the OLAF - AFIS application CIS CASH + module).

Criterion 32.7 - NOPCML-FIU receives information obtained through the declaration/disclosure process, including suspicious cross-border transportation incidents as described under c.32.7). There is a bilateral cooperation protocol concluded in 2010 between the NCA and General Inspectorate of Border Police with the scope of developing cooperation between institutions and exchanging data and information on the control of illegal migration and transnational crime such as counterfeiting and ML. However, this protocol does not include specifically exchange of information obtained through the declaration/disclosure process or notifying about suspicious cross-border transportation incidents.

Criterion 32.8 (a) and (b) - The NCA may temporarily withhold cash by an administrative decision if the accompanying cash declaration obligation or the unaccompanied cash disclosure obligation is not complied with, or there are indications that the cash, regardless of the amount concerned, is related to a criminal activity. The period of temporary cash withholding is strictly limited to the time needed for the authority to determine whether the circumstances of the case justify further withholding. The temporary withholding period may not exceed 30 days. After a thorough assessment of the need for and the proportionality of an extension of the temporary withholding period, the competent authorities may decide to extend the temporary withholding period to a maximum of 90 days. If no decision is taken on the continued withholding of cash within this period, or if it is decided that the circumstances of the case do not justify further withholding, the cash shall be returned immediately (Regulation (EU) 2018/1672, Art. 7, applied in Romania based on the Order of the President of the Fiscal Administration No. 1958/2021 of 10 December 2021).

¹¹²<https://www.customs.ro/info-publice/protejarea-frontierei/controlul-numerarului/formular-declarare-numerar>

Criterion 32.9 (a) – (c) - NCA uses the declaration/disclosure system OLAF application - AFIS - CIS CASH + module) which allows NCA to provide international co-operation and assistance in accordance with the Recommendations 36 to 40 and to provide electronically to the competent authorities of all other Member States, the information on: (a) *ex officio* declarations (on false declaration or false disclosure) (covers c.32.9(b)); (b) on amounts of non-declared/disclosed cash below the threshold when there is a suspicion related to criminal activity (covers c.32.9(a) with the limitation to share “*when there is a suspicion related to criminal activity*”); (c) obtained cash declarations or disclosures, where there are indications that the cash is related to a criminal activity (covers c.32.9(c) but only with respect to declared/disclosed cash), and (d) anonymized risk information and the results of the risk analysis (covers c.32.9 for any suspicion) (Regulation (EU) 2018/1672, Art. 10 and 16 (1) (c)).

The NCA can also exchange information when it is requested by other authorities, even when there are no indications that the cash is related to a criminal activity, in accordance with the provisions of the Naples II Convention, Article 4(1) of Regulation (EC) no. 515/97 of the Council of 13 March 1997 regarding mutual assistance between the administrative authorities of the member states and the cooperation between them and the Commission in order to ensure the appropriate application of the legislation in the customs and agricultural fields and Regulation (EU) 2018/1672 and with the agreements of the EU mutual assistance with third countries.

In accordance with Article 11 (1) of Regulation 1672/2018, the Member States or the Commission may transmit information to a third country, in the framework of mutual administrative assistance, subject to the granting of a written authorization by the competent authority which initially obtained the information and such transmission respects national law and Union law on the transfer of personal data to third countries.

Also, in accordance with Article 11 (2) of Regulation 1672/2018, the Member States shall notify the Commission of any transmission of information pursuant to the aforementioned provisions.

In accordance with Art. 13 (4) of Regulation (EU) 2018/1672, the competent authorities and the financial information unit store the personal data obtained in accordance with Articles 3 and 4, with Art. 5(3) and with Art. 6 for a period of 5 years from the date the data was obtained. At the end of the respective period, these personal data are deleted.

Criterion 32.10 – The disclosure/declaration requirements do not restrict: (i) trade payments between countries for goods and services or (ii) freedom of capital movements. Regulation (EU) 2018/1672 provides safeguards to ensure the proper use of information collected through the declaration/disclosure systems, without restricting either trade payments between countries for goods and services, or the freedom of capital movements, in any way. This is achieved through the measure which provides that the period of temporary withholding is strictly limited to the time required for the NCA to determine whether the circumstances of the case justify further withholding. The temporary withholding period may not exceed 30 days. After a thorough assessment has been made of the need for and the proportionality of an extension of the temporary withholding period, the competent authorities may decide to extend the temporary withholding period to a maximum of 90 days. If no decision is taken on the continued withholding of cash within this period or if it is decided that the circumstances of the case do not justify further withholding, the cash shall be returned immediately (Regulation (EU) 2018/1672, Art. 7(1) and (3)).

Criterion 32.11 - (a) and (b) Persons who are carrying out a physical cross-border transportation of currency or BNIs that are related to ML/TF or predicate offences are subject to same sanctions and confiscation measures as referred under R.3, R.4 and R.5.

Weighting and Conclusion

Romania being EU country applies Regulation (EU) 2018/1672 as supra-national basis for implementing the requirements of R.32 and some deficiencies exist. Romania has not supplemented Regulation (EU) 2018/1672 requirements and thus relevant obligations to declare or disclose apply only when *cash* is entering or leaving the EU via Romania (c.32.1 - 32.3). Sanctions for submitting false declaration or disclosure are not dissuasive (c.32.5). Co-ordination among NCA and Border Police does not include the exchange of information obtained through the declaration/disclosure process or notifying about suspicious cross-border transportation incidents (c.32.7). Considering the context of the Romania (cash intensive country) these shortcomings are major. Consequently, **R.32 is rated PC**.

Recommendation 33 – Statistics

In the 4th round MER, Romania was rated PC on former R.32 due to deficiencies in keeping comprehensive statistics.

Criterion 33.1 – AML/CFT Law provides that relevant authorities (judicial bodies, NOPCML-FIU and supervisors) shall keep relevant statistical data for the efficiency of the measures for prevention and combating ML and TF in their specialized area (Art.1(9)). Romania keeps statistics on following:

(a) Limited statistics on STRs and other reports, received and disseminated is kept (e.g. no statistics is kept on follow-up actions and statistics kept on STRs and other reports is not broken down by ML, associated predicate offences and TF suspicion). This is despite the fact that in addition to general requirement as described above (AML/CFT Law, Art.1(9)), there is also requirement to keep data for measuring different phases of reporting, including the number of the suspicious transactions' reports submitted to the NOPCML-FIU and on the follow-up actions performed (AML/CFT Law, Art. 1(9)b)). In addition, the law requires that depending on the availability, the NOPCML-FIU should store the data which indicates the number and the percentage of the reports¹¹³, which led to a supplementary investigation, together with the annual report to obliged entities detailing the usefulness and the follow-up of the presented reports (AML/CFT Law, Art.1(9)c)). No statistics is kept on follow-up actions and statistics kept on STRs and other reports is not broken down by ML and TF suspicion.

(b) Comprehensive statistics on ML/TF investigation, prosecutions, and convictions, broken down per predicate offences is not maintained although there is general legal provision on keeping statistics as mentioned above and specific requirement for relevant authorities to keep statistics on the investigative cases, the number of the prosecuted persons, the number of the convicted persons for ML or TF (AML/CFT Law, Art.1(9) and (9)b)).

¹¹³ There are four types of reports the NOPCML-FIU receives, including STR and three types of threshold-based reports – CTR (cash transactions equal/over of EUR 10 000 equivalent), ETR (cross-border transactions equal/over of EUR 10 000 equivalent) and FTR (money remittance transactions equal/over of EUR 2 000 equivalent).

The Section of Human Resources and Documentation of the POHCCJ collects statistical data both from the sections operating within this unit and from other the prosecutors' offices (see c.30.1) and these judicial statistics include data on cases involving the offences of ML and TF. Given the data collection method, the statistics compiled does not provide complete data for ML because some cases, although related to the offence of ML, are not highlighted in this category, but only in the category of the more serious predicate offence. Separately from this, some statistical data is also gathered via the application available in the Intranet network of the Public Ministry. However, this also does not amount to maintaining comprehensive statistics on relevant matters.

(c) Authorities have obligation to keep statistical data about value in euro of the goods which were blocked or seized, in addition to general requirement as mentioned above (AML/CFT Law, Art. 1(9) and (9)b)). In practice, authorities keep only partial statistics on assets seized, while there is no break down by predicate offences, no statistics is kept on property confiscated broken down by predicate offences, as well as no statistics is available on types of property frozen, seized and confiscated.

(d) Authorities do not maintain comprehensive statistics on MLAs or other international requests for cooperation (for LEAs, judicial authorities, and supervisors), including about extradition, seizures, confiscations, and BO information. This is despite of general requirement as mentioned above (AML/CFT Law, Art.1(9)).

Weighting and Conclusion

Romania does not maintain comprehensive statistics on all key parts relevant to the effectiveness and efficiency of their AML/CFT system. For these reasons, **R.33 is rated PC**.

Recommendation 34 – Guidance and feedback

In the 4th round MER, Romania was rated LC on former R.25 due to: (i) lack of practical guidance for non-bank FIs, PIs and EMIs; (ii) general nature of guidance issued, notably on the nature of ML/FT risks in Romania; and (iii) limited availability of information on rules and guidance.

Criterion 34.1

Guidance

As a supervisory authority, the NOPCML must also issue sectoral regulations in order to implement the AML/CFT Law (AML/CFT Law, Art. 59(1)) (see below). It has issued NOPCML AML/CFT Rules (regulation) for sectors that it supervises (Art. 37 explains that provisions regulate the proper application of the AML/CFT Law, and their non-observance is sanctioned according to that law).

In carrying out its functions (FIU and supervisor), the NOPCML must adopt a number of specified regulations/guidelines (AML/CFT Law, Art. 39(3)(k)). Accordingly, it has issued the following regulations: (i) regulation on transmission of information to the NOPCML (2021); (ii) regulation on providing feedback to on information submitted to the NOPCML (2022); and (iii) regulation on registration of reporting entities. It has also issued the following guides: (i) guide on suspicion indicators and typologies (2020 and 2022); and (ii) guidelines on criteria and rules for recognising high or low risk ML/TF (2021). Separately, Government Decision No 603/2011 provides for approving Rules on the supervision by the NOPCML of implementation of international sanctions.

In addition, the NOPCML is expected to issue instructions, recommendations, and points of view to ensure the effective implementation of obligations in the AML/CFT Law (AML/CFT Law, Art. 39(3)(j)). In this respect, the NOPCML has issued the following: (i) guidelines for the identification of BO – in conjunction with other supervisors, and the including the SRBs, and Romanian Association of Banks (2022); (ii) guide for real estate developers (2022); (iii) recommendations on identification of situations presenting risk of association with a laundromat-type case (2021); and (iv) procedure for providing feedback on STRs (2021).

The NOPCML has also issued Order no. 14 (2021) for the approval of the form and content of STRs. This order contains the STR form, which provides obliged entities with details of what and how to file.

Regulatory acts are issued by the NOPCML on the basis, and in execution, of laws, decisions, and Government ordinances. These further interpret and set out detailed requirements of the obligations foreseen. However, the authorities have not explained the consequences of failure to comply with such acts. Guidelines are recommendations for obliged entities to adopt in order to ensure uniform implementation of the legal provisions in the AML/CFT framework.

In addition, the NOPCML publishes typologies on its website. It last did so in March 2022. These are issued separately as descriptions of specific cases, including graphs.

Other supervisory authorities and SRBs must also issue sectoral regulations in order to implement the AML/CFT Law (AML/CFT Law, Art. 59(1)). These further interpret and set out detailed requirements of the obligations foreseen by the law. In the case of the NBR and FSA these regulations must cover: (i) CDD measures; (ii) internal control framework; (iii) recruitment, training and vetting of employees; and (iv) measures to reduce risk of ML/TF and address deficiencies (AML/CFT Law, Art. 59(3)). The NBR has issued the NBR AML/CFT Regulation, and the FSA has issued the FSA AML/CFT Regulation no. to support implementation of the AML/CFT Law. Failure to comply with the regulations may be sanctioned in the same way as failure to comply with the AML/CFT Law (NBR AML/CFT Regulation, Art. 28(3) and FSA AML/CFT Regulation, Art. 45).

Similarly, the NBR and FSA are required to issue regulations on monitoring the implementation of international sanctions regarding the freezing of funds (NBR Regulation no. 28/2009 on monitoring the implementation of international sanctions regarding the freezing of funds and FSA Regulation no. 25/2020 on the supervision of the implementation of international sanctions).

FIs are also required to apply the guidelines issued by the ESAs, to the extent that is set out by supervisors (AML/CFT Law, Art. 59(4)). The NBR has issued instructions which, whilst not legally binding, could be indirectly enforced as failure to sufficiently manage risks. In line with this requirement, the NBR has issued the following: (i) instructions on the measures PSPs should take to detect missing or incomplete information on the payer or the payee, and the procedures they should put in place to manage a transfer of funds lacking the required information (ESAs Joint GL JC/GL/2017/16); and (ii) instructions on ML/TF risk factors (ESAs Joint GL JC/2017/37). The FSA has issued FSA AML/CFT Regulation to support implementation of the ESAs ML/TF Risk Factor Guidelines (ESAs Joint GL JC/2017/37).

The NGO has issued Order No. 370/2021 on instructions on preventing and combating ML/TF in the field of gambling in Romania (AML/CFT Law, Art. 59(1)).

SRBs are also required to issue regulations as required by the new AML/CFT Law, Art. 59(1). So far, only NUNPR has done so¹¹⁴. NUNPR also publishes further information related to AML/CFT on its website – mainly links to the NOPCML website and published information. Rules issued in 2012 by the CTA under the previous AML/CFT law remain in place.

Feedback

The NOPCML-FIU is expected to provide feedback to covered FIs and covered DNFBPs on the effectiveness of, and actions taken by, the NOPCML, following reports that it receives (AML/CFT Law, Art. 34(9), NOPCML Orders No. 6/2021 and No. 91/2022). The latter includes a form to be used for the provision of feedback; feedback is provided quarterly.

The NBR uses three channels in order to provide feedback: (i) tailored and very detailed recommendations for specific/individual FIs, based on supervisory findings or as a response to certain request for guidance; (ii) specific recommendations/measures for the supervised FI sector/subsectors/clusters when common risks are detected (seven in 2020 and 2021); and (iii) meetings/correspondence with industry representative association/bodies, e.g., to discuss legislative changes. The FSA uses guidance letters to provide feedback following requests for guidance on particular points.

No information has been provided on feedback mechanisms by other competent authorities or SRBs.

Training

The NOPCML is required to organise AML/CFT training (AML/CFT Law, Art. 39(3)(p)).

Weighting and Conclusion

The NOPCML, NBR and FSA are active in their outreach to the private sector which takes numerous forms (regulations, guidance, feedback, training, etc.).

However, the legal basis for enforcing compliance with NOPCML sectoral regulations is not clear, and the majority of SRBs have still to issue sectoral regulations for their sectors. Also, no information has been provided on feedback mechanisms employed by other competent authorities or SRBs. These shortcomings are minor.

R.34 is rated LC.

Recommendation 35 – Sanctions

In the 4th round MER, Romania was rated PC on former R.17 due to: (i) sanctions not covering all relevant requirements or having lack of practicability; and (ii) sanctions set out in the AML/CFT legal framework not being proportionate nor dissuasive.

R.10 and R.23 list activities to which the AML/CFT Law does not apply and so which are not subject to regulation and supervision.

¹¹⁴ Sectoral rules for accounting professionals took effect in January 2023.

Criterion 35.1 -

AML/CFT Law (R.9 to R.23)

Violations of the AML/CFT Law by obliged entities can attract criminal, civil, disciplinary (e.g., in the case of a SRB), contravention¹¹⁵, or administrative sanctions (AML/CFT Law, Art. 42(1)). If a violation constitutes the constituent elements of a criminal offence, the prosecution authorities are notified.

Criminal liability for violations of the AML/CFT Law is established, in principle, under the terms of the CC. Thus, whenever a violation of the provisions of the AML/CFT Law fall within the scope of an offence under the CC, liability will be incurred. For example, where staff of the NOPCML are not permitted to transmit confidential information except as permitted under the AML/CFT Law (Art. 41(2)) but do so, this deed may also constitute an offence under the CC (Art. 304(1)). Also, if a covered FI fails to comply with its obligation to report suspicion of ML/TF and this failure is for the purposes of preventing or hindering the investigation in a criminal case, criminal liability, serving a sentence or a custodial sentence, this deed may constitute an offence of aiding and abetting a perpetrator, provided for in the CC (Article 269(1)).

Failure to comply with restrictions on tipping off is a criminal offence and shall be punished by imprisonment for a period between six months and three years, or by a fine if the act does not constitute a more serious offence (AML/CFT Law, Art. 47(1)). Failure to report suspicion of ML/TF is not always subject to a criminal sanction.

The NBR is authorised to impose a range of contravention and administrative sanctions to obliged entities in circumstances listed under c.27.4. Authorisation to impose sanctions may be limited in respect of some breaches that are not serious, repeated, or systematic, including reporting of suspicion. In the case of a breach, the following sanctions may be applied: (i) written warnings; (ii) public warnings; (iii) a fine up to 10% of turnover or RON 23 million (EUR 4.6 million), whichever is higher; (iv) an order to cease unlawful conduct or refrain from repeating it; and (v) withdrawal of the licence granted to a covered FI (AML/CFT Law, Art. 27(8) and (9)).

The FSA is authorised to impose contravention sanctions to obliged entities for failures to comply with the AML/CFT Law, regulations or other acts issued pursuant to that law that do not amount to a criminal offence (AML/CFT Law, Art. 28(5) and Art. 43). In the case of a breach, a warning or fine ranging from RON 10 000 (EUR 2 000) to RON 23 million for a natural person and RON 10 000 to the lower of RON 23 million or up to 10% of total annual turnover for a legal person must be applied (AML/CFT Law, Art. 43(7)). These sanctions apply to isolated failures, as well as those that are repeated and systematic.

The NOPCML is authorised to impose contravention sanctions to obliged entities for failures to comply with the AML/CFT Law and Regulation (EU) 2015/847 that do not amount to a criminal offence (AML/CFT Law, Art. 43) in respect of all covered FIs, DNFBPs and VASPs that are not supervised by the NBR or FSA. In the case of a breach, a warning or fine must be applied (AML/CFT Law, Art. 43(3) and (4)). Applicable fines range from RON 10 000 (EUR 2 000) to RON

¹¹⁵ Contravention liability is a form of legal liability which is formed by the state's right to prosecute the violator as well as the obligations of the latter to answer for their act and to submit to the sanction applied in order to restore the authority of the law. The legal framework for the regulation of contraventions is constituted by Government Ordinance no. 2/2001. Typically, contravention sanctions consist of a complementary warning and fine.

150 000 (EUR 30 000) (depending on the type of breach and supervisory discretion), the upper limit for which is increased in the case of legal persons by 10% of total annual revenue (AML/CFT Law, Art. 43(3)). The upper limit of these fines can be increased in the case of a serious, repeated and/or systematic breaches by an additional RON 50 000 (EUR 10 000) for natural persons and RON 5 million (EUR 1 million) for legal persons (AML/CFT Law, Art. 43(5)). In the case of covered FIs supervised by the NOPCML that are legal persons, the upper limit of these fines can be increased by up to 10% of total annual turnover (but not less than RON 23 million). In the case of covered FIs supervised by the NOPCML that are natural persons, the upper limit of these fines can be increased up to RON 23 million (AML/CFT Law, Art. 43(6)).

In addition to the application of a fine by the FSA and NOPCML, one or more supplementary administrative measures may be applied to obliged entities (AML/CFT Law, Art. 44(1)): (i) confiscation of property designated, used or resulting from the contravention; (ii) suspension of a licence to carry out an activity, or suspension of an activity for a period between one and six months; (iii) withdrawal of a licence or endorsement of operations for a period between one and six months, or permanently; (iv) blocking of a bank account for a period between 10 days and one month; (v) cancellation of a licence for carrying out an activity; (vi) closure of a branch, or of another secondary establishment; (vii) public statement which identifies the person and nature of the violation; and (viii) an order requiring a person to cease conduct and to refrain from repeating it. Not all these supplementary measures are available to the NBR (see above).

In general, a sufficient range of administrative sanctions can be applied proportionately to greater or lesser breaches of the AML/CFT Law. However, there is no clear criminal or administrative sanction available for less serious, isolated failures by FIs supervised by the NBR to report suspicion of ML/TF, and no general criminal offence for failing to report.

Information has not been provided on civil or disciplinary sanctions that may be applied.

Targeted financial sanctions (R.6 and R.7)

Violations of UN and EU sanctions (TFS) and failure to report funds and economic resources that are subject to such sanctions by obliged entities can attract criminal, civil, disciplinary (e.g., in the case of a SRB) or administrative sanctions (GEO no. 202/2008 on the implementation of international sanctions, Art. 26(1)).

Failure to comply with TFS (linked to R.7 and R.8) may be subject to a fine of between RON 10 000 (EUR 2 000) and RON 30 000 (EUR 6 000) and confiscation of third party property intended, used, or resulting from the contravention (GEO no. 202/2008 on the implementation of international sanctions, Art. 26). These sanctions are applicable for non-compliance with international sanctions for all types of obliged entities. In addition, one or more of the following complementary administrative sanctions may be applied: (i) suspension of approval to exercise an activity, or as the case may be, suspension of the activity of a legal person for a period between one and six months; and (ii) withdrawal of an approval for certain operations or activities for a period of between one and six months, or permanently (GEO no. 202/2008 on the implementation of international sanctions, Art. 4). Whilst there is a sufficient range of sanctions, it is not clear that they can be applied proportionately to lesser breaches of requirements by larger FIs and DNFBPs, where only a fine may be appropriate (and not suspension or termination of activities) where the maximum amount that can be applied is limited to EUR 6 000.

Sanctions may also be applied for failing to comply with GEO 603/2011, which requires obliged entities to apply CDD measures to determine whether the customer base includes designated persons or entities, or whether transactions carried out involve assets within the meaning of GEO

202/2008). These sanctions are lower than those provided for failing to comply with TFS (linked to R.7 and R.8).

Information has not been provided on criminal, civil or disciplinary sanctions that may be applied.

NPOs (R.8)

The Fiscal Administration is responsible for imposing sanctions in respect of breaches to accounting legislation, which includes requirements related to documentation that must be maintained. However, there is no mechanism for applying effective, proportionate, and dissuasive sanctions for violations by NPOs or persons acting on behalf of those NPOs.

Criterion 35.2 –

AML/CFT Law (R.9 to R.23)

In the case of a FI supervised by the NBR that is a legal person, in addition to sanctions that may be applied to the obliged entity (see c.35.1), administrative sanctions may be applied also to: (i) the legal person's directors and senior management – withdrawal of approval (AML/CFT Law, Art. 27(7) and 27(8)(e)); and (ii) person responsible for the breach – fine between RON 10 000 and RON 23 million and withdrawal of approval (AML/CFT Law, Art. 27(8)(d) and (e)). A fine can be, hence, applied to a manager or director only if they have been considered as responsible for the specific breach.

In the case of obliged entities supervised by the FSA or NOPCML that are legal persons, where that legal person is warned or fined, the same sanctions can also be applied separately to each of the members of the management body and any other natural persons who are responsible for the legal person's failure to comply with the provisions of the AML/CFT Law or Regulation (EU) 2015/847 (AML/CFT Law, Art. 43(3)) – irrespective of seniority. The amount of the fine that may be applied to a responsible person is in line with the fine that may be applied to obliged entities that are individuals (see c.35.1). In addition, a temporary prohibition may be placed on the exercise of functions by any person responsible for a violation (AML/CFT Law, Art. 44(1)(i)).

Targeted financial sanctions (R.6 and R.7)

The same sanctions that apply to obliged entities (see c.35.1) may also be applied to a person who is part of the staff of a public authority (GEO no. 202/2008 on the implementation of international sanctions, Art. 26(2)). Sanctions may not be applied to directors and senior management of FIs or DNFBPs.

Weighting and Conclusion

In general, a broad range of sanctions is available to supervisors for breaches of AML/CFT obligations, though deficiencies are observed in the sanctioning of failure to report suspicion of ML/TF. It is not clear that sanctions can be applied proportionately to lesser breaches of TFS requirements by larger FIs and DNFBPs and sanctions may not be applied to directors and senior management of FIs or DNFBPs. Also, there is no mechanism for applying effective, proportionate, and dissuasive sanctions for violations by NPOs. These are moderate shortcomings.

The gap in the application of preventive measures to the safekeeping and administration of cash and to some DNFBPs is minor.

R.35 is rated PC.

Recommendation 36 – International instruments

In the 4th round MER, Romania was rated LC on former R.35 and PC on SR.I due to: (i) ratification and implementation only of the majority of provisions of the Vienna and Palermo Conventions; (ii) ratifying but not fully implementing the CFT Convention; and (iii) shortcomings in the implementation of UNSCRs.

Criterion 36.1 - Romania is a party of the Vienna Convention (signed on 20.12.1988 and ratified through Law 118/1992 on 30.12.1992), the Palermo Convention (signed on 15.11.2000 and ratified through Law 565/2002 on 8.11.2002), the Merida Convention (signed on 9.12.2003 and ratified through Law 365/2004 on 5.10.2004) and the International Convention for the Suppression of the Financing of Terrorism (signed on 26.09.2000 and ratified through Law 623/2002 on 9.01.2003).

Furthermore, Romania has ratified number of Council of Europe Conventions, including the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg Convention) and the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Warsaw Convention).

Criterion 36.2 - Romania has ratified the Vienna Convention without any reservations and implemented the provisions of the Vienna Convention to domestic legislation through Law 118/1992. The Palermo Conventions requirements are implemented to Romanian legislation through Law 39/2003 regarding preventing and combating organised crime. The Merida convention is implemented through Law 365/2004. The Terrorist Financing Convention is implemented through the Law on Terrorism and through certain provisions of Law 286/2009 (CC) and Law 135/2010 (CPC).

Weighting and Conclusion

R.36 is rated C.

Recommendation 37 - Mutual legal assistance

In the 4th round MER, Romania was rated LC on both former R.36 and SR.V since shortcomings in the TF offence could have impacted MLA in cases where dual criminality was a precondition.

Criterion 37.1 - Romania has the legal basis to provide a wide range of MLA in relation to ML, associated predicate offences and TF based on international treaties, bilateral agreements and provisions of Law 302/2004 (on international judicial cooperation in criminal matters; Title VIII) in combination with specific laws which have specific provisions on international judicial cooperation. There are no legal impediments preventing authorities from providing MLA rapidly.

Criterion 37.2 - Romania has 2 central authorities dealing with incoming and outgoing MLA requests: (i) the MOJ is responsible for MLA requests that are formulated at the trial stage and at the stage of execution of the sanctions¹¹⁶; (ii) the POHCCJ is responsible for MLA requests formulated at the criminal investigation and prosecution stage. Based on material competence, the MLA requests formulated during criminal investigation and prosecution are divided between the POHCCJ substructures, namely, IJCS (International Judicial Cooperation Service), NAD and

¹¹⁶ Exception being when specific bilateral treaties stipulate that the MoJ is the central authority for MLA.

DIOCT. The competent authorities under the EU direct cooperation regime are POHCCJ substructures, namely IJCS, NAD, DIOCT and 235 regional prosecutors' offices.

Law 302/2004 (Art. 336) provides maximum deadlines for executing European Investigative Orders. Whilst this is not explicitly stipulated for the requests from non-EU member states, Romania follows general provisions from the CPC if such deadlines are set out. MOJ does not have clear formalized processes and express criteria for prioritisation of incoming MLA requests. However, the authorities advised that in practice, on a case-by-case basis, prioritisation order is determined by the applicable international instruments, laws, type of measures envisaged, and the terms specified in the incoming MLA requests. The POHCCJ advised that it assigns workload to prosecutors based on specialization, skills, experience, the number of files being worked on and their degree of complexity, the specifics of each individual case, cases of incompatibility and conflict of interests (to the extent that are known). The same criteria are used for identifying staff to work with MLA requests (the Regulation of organizing and functioning of prosecution units, Art. 19(2)). There is no central case management system to allow monitoring the progress and therefore timely execution of the incoming MLA requests by central authorities.

Criterion 37.3 - Law 302/2004 (Art. 3) on international judicial cooperation in criminal matters sets the grounds for refusal of the MLA requests. Art. 335 in the same Law provides reasons and criteria for non-recognition and non-execution of European Investigation Orders and those do not pose unreasonable and unduly restrictive conditions.

Criterion 37.4

(a) Romanian legislation does not provide grounds to refuse the MLA request if it involves fiscal matters.

(b) Romanian legislation does not include secrecy and confidentiality requirements as a ground for refusal.

Criterion 37.5 - Art. 9 of Law 302/2004 as well as Art. 285 (2) of CPC provide the necessary confidentiality obligations for MLA requests. If the confidentiality for any reason cannot be ensured, the requesting state shall be notified thereof.

Criterion 37.6 - Dual criminality is not a condition for providing assistance, when requests do not involve coercive actions. Law 302/2004 does not list such a ground for refusing to provide MLA.

Criterion 37.7 - Authorities advised that the dual criminality is required for coercive measures (e.g., seizure and confiscation, searches, bank secrecy information), but if the offence by factual circumstances constitutes a criminal offence under the legislation of Romania, MLA shall be delivered regardless of the denomination of the offense in the requesting country. The legislation (CPC and CC) does not require that the offence should fall under the same category or use the same terminology in the legislation of the requesting foreign country. However, there can be impediments when providing MLA in relation to the act of self-laundering which was found to be unconstitutional by the CCR (IO.7).

Criterion 37.8 -

(a) All the specific powers required under R.31 are available for Romanian authorities to respond to MLA requests (Law 302/2004, Art. 233, 237, 241, 267-269 and CPC, Art. 139-148).

(b) MLA requests are subject to same provision of national legislation as the investigative activities for local investigations in domestic framework and therefore the broad range of other powers and investigative techniques are available for executing MLA requests.

Weighting and Conclusion

Romania meets most of the criteria under this recommendation. However, Romania does not have a clear formalised process for timely prioritisation and execution of MLA requests; there is no case management system aimed at monitoring progress on requests (c.37.2).

R.37 is rated LC.

Recommendation 38 – Mutual legal assistance: freezing and confiscation

In the 4th round MER, Romania was rated LC on R.38 since establishment of an asset forfeiture fund had not been considered.

Criterion 38.1 - The legal framework allows Romanian competent authorities to take expeditious action to identify, freeze, seize and confiscate property, proceeds and instrumentalities in response to MLA and EIO requests (Law 302/2004 Art. 231, 242; CPC Title V Chapter III; CC Art 112 and 112¹). Furthermore, Romania uses the EU, the CoE and the UN conventions and framework as well as bilateral treaties for freezing, seizing and confiscation.

Criterion 38.2 - Romania can use the legal basis provided in Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders when requested by other EU member states. Although the Romanian criminal law does not provide non-conviction-based confiscation, the law on international judicial cooperation in criminal matters provides that the measures equivalent to confiscation, which according to Romanian law are not criminal penalties may be ordered if the measures result in the final disposition of the assets, which are related products or instruments of criminal acts (Art. 146(3)).

Criterion 38.3 – Romanian authorities can co-ordinate seizure and confiscation by formal and informal channels of cooperation. Eurojust, EJN, ARO and CARIN networks as well as JITs and liaison officers are used to coordinate the identification, freezing, seizing and confiscation of property. CPC provides the set up for managing and disposing frozen and seized assets during criminal proceedings (Title V Chapter III). The NAMSA – central authority, that plays a role of ARO, is also responsible for the management of frozen, seized and confiscated assets as well as for disposition of such property when necessary.

After the seizure of the assets, the owner of the assets is informed that the assets can be sold before the final verdict. Following the amendments of CPC from July 24th, 2022, the interlocutory sale of immovable property is only possible upon receipt of the owner's request or approval (Art. 2521(1)). Still, the confiscated assets (both, movable and immovable) are transferred to the property of the state and may be disposed, or, in case of immovable property, may be reused for social or public purposes.

Criterion 38.4 – Upon approval of the Minister of Justice, the NAMSA is authorized to negotiate and facilitate the conclusions of bilateral agreements for sharing of confiscated assets (Art. 324, Law no. 302/2004 corroborated with art.42 of Law no. 318/2015).

If the confiscated amount is below EUR 10 000 (or equivalent in foreign currency), the assets are transferred to the state budget. If the value of confiscated assets is higher than the equivalent of EUR 10 000, 50% of the confiscated assets will be transferred to the state who issued the confiscation order. If the case refers to confiscation in foreign jurisdiction based on Romanian court decision, the NAMSA is authorised to negotiate the percentage of confiscated assets to be shared with the requested state, which executed the confiscation.

Weighting and Conclusion

R.38 is rated C.

Recommendation 39 – Extradition

In the 4th round of MER, Romania was rated C on R.39.

Criterion 39.1 - Extradition may be granted or requested on the basis of an international treaty Romania is a party to or on the basis of reciprocity according to the law (CC Art. 14). Law 302/2004 provides the details for the regularity check regarding incoming MLA requests on extraditions; as for non-EU countries, the extradition requests must comply with the international treaties Romania has ratified or bilateral treaties Romania has signed in order to ensure reciprocity for extradition requests (Art.38). As an EU-member state, Romania has implemented European Arrest Warrant (Law 302/2004 Art. 89 and 97). With non-EU countries Romania has signed and ratified 14 bilateral treaties, which cover extradition. In addition, Romania has ratified European Convention on Extradition and three additional protocols, but not the 4th protocol. Law 302/2004 on judicial cooperation in criminal matters stipulates various deadlines concerning extradition process thereby technically ensuring execution without undue delay (Art. 23(2), 38(2), 38(5), 40, 43-46, 49-50, 52(4), 52(7-8), 53(2-3, 5), 56(3), 57(5), 65, 67(1), 68(1)).

(a) ML and TF are both extraditable offences.

(b) MOJ is the responsible central authority for receiving extradition requests and European Arrest Warrants (Law 302/2004 Art. 10). Although Romania does not have comprehensive case management system and formally approved guidelines for prioritisation of extradition requests, the urgency of the processing of the extradition requests and short deadlines are stipulated in Law 302/2004 (Art. 37(2), 38(5), 43).

(c) The limitations to international cooperation are set out in Law 302/2004 on international judicial cooperation in criminal matters, and do not appear unreasonably or unduly restrictive (Art. 3, 21, 22 and 38).

Criterion 39.2 - (a) Law 302/2004 on international judicial cooperation in criminal matters allows extradition of Romanian citizens in limited conditions. The extradition has to be based on the international multilateral conventions and conditions that the extraditable person has dual citizenship of the requesting State or resides in the territory of the requesting state at the date of filing of the extradition requests. As for the EU Member-States (as a requestor), additional conditions exist, i.e., if the extraditable person has committed the act on the territory or against a citizen of a Member State of the EU (Art. 20, Law 302/2004).

(b) Law 302/2004 on international judicial cooperation in criminal matters provides for the obligation to submit the case to Romanian competent judicial authorities, in order to exercise the criminal prosecution and trial upon the request of the country whose extradition request was refused (Art. 23(1), Law 302/2004). If Romania refuses to extradite a foreign citizen, who is suspect, accused or convicted by the requesting country in a criminal offence with a minimum penalty of imprisonment of 5-years, Romania has to conduct (without exception and without delay) their own examination on the same conditions as in the Romanian legislation (Art. 23(2), Law 302/2004).

Criterion 39.3 – Art. 24 of Law 302/2004 on international judicial cooperation in criminal matters requires dual criminality for the execution of the extradition request. Nevertheless, it also states that differences in legal qualification and the denomination of the offence by the same terminology in the requesting country and Romania are not restrictions for the execution of the extradition request.

Criterion 39.4 – Legislation provides simplified extradition mechanism waiving the necessity to submit formal request for extradition, if an extraditable person voluntarily gives his consent to being extradited and surrendered to the competent authorities of the requesting State, which is the same for EU and non-EU countries (Art. 47 and 48, Law 302/2004). In addition, Romania has incorporated European Arrest Warrant (2002/584/JHA: Council Framework Decision) to its national legislation (Law 302/2004; Title III), which allows simplified surrender procedure instead of extradition between EU Member States.

Weighting and Conclusion

The absence of case management system for timely execution and prioritisation of extradition requests is a minor technical limitation (c.39.1). **R.39 is rated LC.**

Recommendation 40 – Other forms of international cooperation

In the 4th round MER, Romania was rated LC on R.40. The main deficiencies related to missing technical aspects for international cooperation for some supervisory authorities and limited confidentiality obligations applicable to former NOPCML-FIU staff which could have jeopardised the protection of information provided by foreign FIUs.

Criterion 40.1 - The NOPCML-FIU has the authority to exchange wide variety of information in relation to ML, associated predicate offences and TF with the foreign FIUs as well as with the other competent authorities both spontaneously and upon request (AML/CFT Law Art. 36 (1) and Art. 39 (3q)). The central registers and the NOPCML-FIU have the ability to provide information on the beneficial owners of the legal entities to the competent authorities and FIUs of other EU Member States; this information should be communicated in a timely manner and free of charge (AML/CFT Law Art 19 (1), (5), (11)). The AML/CFT Law also provides for the possibility of cooperation between financial supervisors and the competent authorities to ensure an effective supervision; special emphasis on cooperation with the competent authorities from other EU Member States on which territory the supervised entity headquartered in Romania performs its economic activities (Art. 26 (7)). Additionally, the AML/CFT Law allows supervisory authorities to conclude cooperation agreements with the competent authorities of third countries that have similar responsibilities to the Romanian supervisory authorities (Art. 38¹(6)). The NAMSA is authorised to exchange wide variety of information with the other AROs as well as foreign entities responsible for asset management (Law No. 318/2015 Art. 20-23). Romanian Police can exchange financial information (Art. 11 and 12 of the Government Ordinance 9/2021).

The FSA may respond to requests for information for investigations that do not constitute violations of Romanian law but represent violations in those states that are signatories to those international agreements which FSA is a party (EO 93/2012 Art. 3 (6)).

Law 39/2003 on preventing and combating organized crime provides general basis for international cooperation by stipulating that the MoIA, the MoJ and the Public Ministry cooperate directly and indirectly, with institutions having similar attributions from other countries as well as with international organizations specialized in the field (Art. 24). However, this cooperation is

limited to prevent and combat transnational crime committed by organized criminal groups, which could leave out individuals and entities not belonging to OCGs.

Criterion 40.2 - (a) AML/CFT Law, Law 302/2004 and Law 39/2003 stipulate the lawful basis for international cooperation (please also see Criterion 40.1).

(b) Competent authorities are not prevented from using the most efficient means possible for the widest range of assistance. Police cooperation and the exchange of criminal intelligence are available 24/7 through Interpol and Europol channels. AML/CFT Law stipulates that the NOPCML-FIU is provided with the adequate resources to apply cutting-edge technologies for the cooperation with foreign FIUs using secure and anonymous channels (Art. 41 (11)).

(c) The AML/CFT Law provides that the NOPCML-FIU exchanges information spontaneously or upon request through secure channels with foreign FIUs and foreign competent authorities (Art. 36 (1)). The NOPCML-FIU uses secure networks (ESW and FIU.Net) for sending and receiving requests and spontaneous disclosures. Police cooperation and the exchange of criminal intelligence are available through clear and secure channels e.g., I 24/7 (Interpol) and SIENA (Europol) as well as through the internal affairs attachés and liaison officers, both Romanians accredited abroad and foreigners accredited in Romania, all brought together by the Centre for International Police Cooperation subordinated to the Police. The NBR uses the EuReCA and E-Gate databases and together with the FSA also the EBA AML Colleges Information Sharing Platform, where information and operation security is guaranteed by the EBA.

(d) The financial intelligence exchange with the foreign FIUs and police cooperation with foreign LEAs does not require approval from other national authorities. The AML/CFT Law requires the NOPCML-FIU to collect requested information from FIs, DNFBPs and VASPs promptly and respond to the requests of foreign FIUs in a timely manner (Art. 36 (5), (6)). The NOPCML-FIU has internal guidelines for prioritisation of requests (PO 09.02 No. 447/2021). Additionally, the NOPCML-FIU follows the Egmont principles for prioritising the timely execution of requests. The processing and the deadlines for international police cooperation are expressly stipulated (GEO no. 103/2006) and the prioritisation of requests is carried out according to the urgency applied by the applicant. Some authorities, such as RIS, supervisors, NAMSA, did not provide information on legal acts or internal guidelines, where prioritisation process and the timeliness (e.g., deadlines for responding) are stipulated for other forms of international cooperation, especially concerning non-EU countries. The RIS informs that commonly the deadline for responding is up to 30 days.

(e) The AML/CFT Law provides the NOPCML-FIU and other supervisory authorities clear process for safeguarding the information received (Art. 36 (1), (3), (8), Art. 38¹ (1), (7)). In safeguarding the information received from foreign counterparties Police relies on Data Processing Regulations by Interpol as well as Europol Regulation, Law 363/2018. Some authorities, such as RIS, supervisors, NAMSA did not provide information on the process for safeguarding the information received from foreign counterparts.

Criterion 40.3 – Romania has the EU instruments as well as multilateral and bilateral instruments in place for international cooperation. Signing memoranda of understanding with foreign competent authorities is not a prerequisite for financial information exchange in Romania.

The AML/CFT Law provides that supervisory authorities may conclude cooperation agreements for the cooperation and exchange of confidential information with the competent authorities of third countries with similar responsibilities (Art. 38¹ (6)).

The NOPCML-FIU has concluded memoranda of understanding on cooperation in the field of exchange of financial information related to ML/TF with 55 jurisdictions based on the powers stipulated in the AML/CFT Law (Art. 39(7)).

The NBR has concluded¹¹⁷ multiple bilateral MOUs with corresponding foreign national authorities as well as multiple multilateral agreements with the ECB and EU national competent authorities based on the powers stipulated in the GEP 99/2006 (Art. 184). Similarly, the FSA the NAMSA have the authority to negotiate MoUs and agreements with foreign counterparties.

Criterion 40.4 – There are no specific legal requirements to provide feedback to requesting foreign competent authorities on the use and usefulness of the information and assistance obtained from them. As a member of Egmont, the NOPCML-FIU is bound by the Egmont Principles for Information Exchange, which provides that feedback to foreign FIUs should be given upon request and also spontaneously and this also stipulated in the internal procedures of the NOPCML-FIU (OP 09.02) The regulations for the Police stipulate that each request from foreign authorities should be addressed and dealt with; the authorities advised that the requests on feedback are handled as any other requests (GEO No. 103/2006). For the Police and for NAMSA the obligation to provide feedback is derived from the usage of international instruments for international cooperation. Requirement to provide feedback is also embedded to several bilateral and multilateral cooperation agreements.

Criterion 40.5 - (a) Judicial bodies, financial and fiscal control bodies (incl. the NOPCML-FIU and customs authorities), and supervisory authorities cannot refuse a request from the EU Member States on the grounds that the request involves fiscal aspects (AML/CFT Law Art. 36¹ (1) and (2a)). There is no explicit restriction which limits refusing the request in case it involves fiscal matters for non-EU jurisdictions.

(b) Judicial bodies, financial and fiscal control bodies (incl. the NOPCML-FIU and customs authorities), and supervisory entities cannot refuse a request from the EU Member States on the grounds that the national legislation requires FIs, DNFBPs and VASPs to keep the secret or confidentiality (AML/CFT Law Art. 36¹ (2b)). The requirements applicable to certain DNFBPs are not unreasonable or unduly restrictive (AML/CFT Law, Art. 5 (1f) and 9 (3)). The legal acts do not provide such explicit requirement in connection to the non-EU Member States. In regard of the non-EU countries the condition for not refusing a request for assistance in connection to secrecy and confidentiality requirements of FIs and DNFBPs are stipulated in conventions, treaties and MoUs, which have limited coverage and do not include all the jurisdictions.

(c) Judicial bodies, financial and fiscal control bodies (incl. the NOPCML-FIU and customs authorities), and supervisory entities cannot refuse a request from the EU Member States on the grounds that there is an ongoing inquiry, investigation or proceeding, unless the assistance would prevent the inquiry, investigation or proceeding in question (AML/CFT Law Art. 36¹ (2c)). There is no explicit restriction which limits refusing the request in case it involves fiscal matters.

(d) As a general rule, Romania does not refuse a request solely on the grounds relating to the nature (or status) of the requesting counterpart authority. Judicial bodies, financial and fiscal control bodies (incl. the NOPCML-FIU and customs authorities), and supervisory entities cannot refuse a request from the EU Member States on the grounds that the nature or status of the requesting competent authority with similar powers is different from that of the competent

¹¹⁷ National Bank of Romania, Memorandums of Understanding <https://bnro.ro/Memorandums-of-understanding-2164.aspx>

authority or institution to which the request is addressed (AML/CFT Law Art. 36¹ (2d)). The legal acts do not provide such explicit requirement in connection to the non-EU Member States. In regard of the non-EU countries the condition for not refusing a request for assistance in connection to secrecy and confidentiality requirements of FIs and DNFBPs are stipulated in conventions, treaties and MoUs, which have limited coverage and do not include all the jurisdictions.

Criterion 40.6 – The AML/CFT Law prescribes that the NOPCML-FIU evaluates, processes, and analyses the information received in a confidential manner (Art. 39 (3d)). Similarly, it provides that the information exchanged by the NOPCML-FIU with the foreign FIUs and other foreign competent authorities may be disseminated to competent Romanian national authorities (POHJCC, RIS, criminal investigative bodies) only with the prior authorisation of the NOPCML-FIU that provided the information, and may be used only for the purpose for which they were requested (Art. 34 (1-3) and 36 (1), (3)).

The police information exchanged via dedicated Europol and Interpol channels and access to those channels follows the international procedures and regulations, which cover controls and safeguards for the information usage. No information has been provided to the AT on whether requirements on such controls and safeguards having aimed at ensuring that information exchanged is used only for the purpose are applicable to all the LEAs and supervisory authorities.

Criterion 40.7 – Information requests from foreign counterparts are handled confidentially, and the information is only disclosed on a need-to-know basis. General regulation provides that authorities shall ensure the confidentiality of requests for international legal assistance (Law 302/2004, Art. 9). The authorities apply the provisions of the General Data Protection Regulation (EU) 2016/679 and the EU Directive 2016/680 and may refuse to transmit the data and information to jurisdictions that do not meet the requested standards concerning privacy and data protection.

The AML/CFT Law prescribes that the NOPCML-FIU evaluates, processes, and analyses the received information in a confidential manner (Art. 39 (3d)). The NOPCML-FIU may exchange information with the foreign FIUs and other foreign competent authorities if those are bound to similar secrecy requirements (AML/CFT Law, Art. 36 (1)). The Egmont principles as well as the requirement of reciprocity and the reference to similar secrecy keeping requirements in the AML/CFT Law provides the NOPCML-FIU grounds to refuse provision of the information if the requesting competent authority cannot protect the information effectively.

The supervisory authorities as well as the auditors and experts acting on behalf of those authorities are obliged to respect professional secrecy (AML/CFT Law, Art. 38¹ (1)).

For supervisory and control purposes the competent authorities may conclude cooperation agreements with competent authorities of the third countries on the basis of reciprocity and only on condition that the information disclosed is subject to a guarantee of the observance of professional secrecy (AML/CFT Law, Art. 38¹ (6)).

Criterion 40.8 - The AML/CFT Law provides that the NOPCML-FIU has the right to suspend transactions for 48h on the basis of received STR, requests from national judicial authorities or foreign FIUs for the purpose of analysis and verification of suspicion (Art. 8 (4)). The NOPCML-FIU has the right to request data and information including classified information from covered FIs, DNFBPs and VASPs, public authorities or institutions or private entities; it has direct access to financial, tax, administrative, as well as to any other information from the LEAs and from criminal prosecution bodies, for performing properly its tasks (AML/CFT Law Art. 39 (3c), (5)).

It is not clear whether all other authorities (apart from the NOPCML-FIU) are able to conduct enquiries on behalf of foreign counterparts.

Criterion 40.9 – The NOPCML-FIU is operationally and functionally independent and autonomous legal entity subordinated to the MoF. The legal base for international information exchange and co-operation is stated in Art. 36, 36¹ and 39 in the AML/CFT Law.

Criterion 40.10 – The AML/CFT Law provides that the NOPCML-FIU may exchange information, on its own initiative or upon request, on the basis of reciprocity with foreign FIUs or with other foreign competent authorities, if such communications are made for the purpose of prevention and control of ML and TF (AML/CFT Law Art. 36 (1)). Nevertheless, the legislation does not specifically regulate the provision of feedback and the outcome of analysis conducted. Still, the NOPCML-FIU is bound by the Egmont Principles for Information Exchange, which provides that feedback to the foreign FIUs should be given. Internal regulations of the NOPCML-FIU provide that the processing of the feedback forms for the foreign FIUs follows the same process as the requests for information (Operational procedure PO-09.02, approved by Order of the President of the Office no. 447/27.10.2021).

Criterion 40.11 - (a) The NOPCML-FIU may exchange information with foreign FIUs, and competent foreign authorities based on reciprocity and on its own initiative or upon request if such communications are made for the purpose of prevention and control of ML and TF (the AML/CFT Law Art. 36 (1)). The NOPCML-FIU has the obligation to forward the received STRs, which relate to another EU Member State promptly to the FIU of that Member State (AML/CFT Law Art. 36 (4)).

(b) The NOPCML-FIU has the power to exchange wide variety of information, that can be accessed directly from the financial, tax, administrative, as well as from the LEAs; it also has a power to request from private and public entities (AML/CFT Law, Art. 39 (3c), (3q) (5)).

Criterion 40.12 – The AML/CFT Law provides for the cooperation of financial supervisors with the competent authorities to ensure an effective supervision. Explicit requirements relate to cooperation with the competent authorities from other Member States on which territory the entity headquartered in Romania performs its economic activities; the aim of which is to ensure effective supervision of AML/CFT compliance. The AML/CFT also stipulates that financial supervisors may conclude cooperation and information exchange agreements with the competent authorities of third countries with similar responsibilities for the supervisory purposes (Art. 38¹ (6)).

In addition to participation in supervisory colleges the NBR has conducted several MOUs and other cooperation agreements¹¹⁸. In case of compliance failures by the entities that form part of the international group, the NBR disseminates the information to the competent authority in the other EU Member State (AML/CFT Art. 27 (16), (16¹)).

The FSA has the legal basis and general principles for co-operation with the foreign counterparts that are stipulated in FSA Regulation No. 13/2009 (Art. 43¹ and 43²). FSA also cooperates through supervisory colleges and under bilateral agreements and MOUs. Since 2013, MoUs concerning securities, insurance or private pension funds have been signed with a large number of EU

¹¹⁸ The list of MOUs is available on <https://www.bnr.ro/Memorandums-of-understanding-2164.aspx> and list of other cooperation agreements on <https://www.bnr.ro/Acorduri-in-domeniul-supravegherii-2205.aspx>

countries, as well as non-EU counterparts, e.g., Qatar, Hungary, the UAE, Kazakhstan, Serbia, Ukraine, Albania, Montenegro, Brazil, Egypt, Turkey, Moldova, China, North Macedonia, etc.

Criterion 40.13 – The AML/CFT Law provides financial supervisors the right to conclude agreements for the cooperation and exchange of confidential information with the foreign competent authorities with similar responsibilities; under conditions that the information will be used for the supervisory purposes. Cooperation agreements are concluded on the basis of reciprocity and only on condition that the information disclosed is subject to a guarantee of the observance of professional secrecy (Art. 38¹ (6)).

The NOPCML-FIU conducts information exchange on its own initiative or on request and based on reciprocity with institutions that have similar functions or with other competent authorities in other Member States, or third countries that have the obligation to keep the secrecy of the information under similar conditions (AML/CFT Law Art. 39 (3q)). The NOPCML is authorised to acquire additional information from the obliged entities and share it with foreign counterparts (AML/CFT Law, Art. 36(6)). The FSA is able to exchange any information already obtained while performing its supervisory activity with other competent authorities from EU-member states and third countries (AML/CFT Law Art. 36¹ and FSA Regulation No. 13/2009 Art. 43¹ and 43²). Similar conditions apply to the NBR (AML/CFT Law, Art. 36¹ and Art. 38¹ (2), (4) and (6)).

Criterion 40.14 – The AML/CFT Law provides the cooperation of financial supervisors with the competent authorities to ensure an effective supervision. The special emphasis on cooperation with the competent authorities from another EU Member State on which territory the entity headquartered in Romania performs its economic activities, in order to ensure effective supervision of compliance with the requirements of legislation transposing EU Directive 2015/849 (Art. 26 (7)). The law allows to provide information on the supervisory activities and conduct joint inspections.

The AML/CFT Law provides that covered FIs, DNFBPs and VASPs that are part of a group are required to implement group-level policies, procedures, and training, including data protection policies and procedures for the exchange of information within the group in order to control ML and funding terrorism, which apply to branches, agents, distributors and subsidiaries owned in the majority of EU Member States and third countries (Art. 24(7)).

The financial supervisors – the NBR and the FSA - are able to exchange regulatory and prudential information collected for supervisory purposes (Law 312/2004 Art. 3(6), 3(7), Law 209/2019 Art. (59), FSA AML/CFT regulation Art. 43¹ and 43² and Law 10/2015 Art. 71 (2)). In addition, as outlined above, AML/CFT Law also allows to exchange information on supervisory activities and carry out joint inspections.

The FIU has the right to exchange wide variety of information, covering also regulatory information, prudential information and AML/CFT information with institutions that have similar functions or with other competent authorities in other EU Member States, or third countries (AML/CFT Law Art. 39 (3q)).

Criterion 40.15 – The AML/CFT Law requires the obliged entities to provide data and information to supervisors carrying out their duties (Art. 26(4)). The AML/CFT Law allows financial supervisors to cooperate with EU counterparts, which inter alia, also includes the possibility of conducting investigation on behalf of requesting supervisory authority as well as subsequent exchange of information (AML/CFT Law, Art. 38¹(5), see GEO 111-2020). Based on concluded cooperation agreements the supervisory authorities may exchange confidential information with competent supervisory authorities of third countries non-EU states (AML/CFT

Law, Art. 38¹(5) and (6), see GEO 111-2020). Therefore, the ability to conduct inquiries on behalf of foreign counterparts and exchange information with them is subject to concluded cooperation agreements. However, FIs in Romania have a very limited presence abroad (see Chapter 1 for more information) and there are no obstacles for the purposes of a group wide supervision. For more information on the agreements with foreign counterparts by the NBR and FSA see c.40.12.

Criterion 40.16 – Financial supervisors (NBR, FSA, NOPCML-FIU) have the right to conclude cooperation agreements which provide for the cooperation and exchange of confidential information with the foreign competent authorities with similar responsibilities; under conditions that the information is used for the supervisory purposes. The cooperation agreements are concluded on the basis of reciprocity and only on condition that the information disclosed is subject to a guarantee of the observance of professional secrecy (Art. 38¹ (6), AML/CFT Law). AML/CFT Law stipulates that the information received from another EU Member State may be disclosed only with the express consent of the competent authority which transmitted it and, where appropriate, only for the purposes for which that authority gave its consent (Art. 38¹ (7)).

Criterion 40.17 – LEAs can exchange information available domestically with foreign counterparts for intelligence purposes. Information for investigative purposes can be provided to foreign counterparts only through judicial cooperation through MLA process by prosecutors' offices. The Centre for International Police Cooperation is the central national authority in the field of international police cooperation. Being part of the Interpol and Europol cooperation and information exchange, the Police are able to exchange domestically available information with foreign counterparts. Similarly, the NAMSA as part of ARO and CARIN networks can exchange domestically available information with the foreign counterparts (Law 318/2015). No information was provided on information exchange with foreign counterparts for intelligence and/or investigative purposes.

Criterion 40.18 – Legal acts provide the conditions under which the competent authorities in Romania can transmit relevant information, both at the request of a State and on their own initiative. The Centre for International Police Cooperation is the SPOC for Europol. Law 56/2018 provides that the competent Romanian authorities shall make available to the Europol National Unit, on their own initiative or at its request, the data necessary for the prevention and combating of crimes within the competence of Europol (Art. 7(2)).

The Public Ministry cooperates with Eurojust and EPPO in accordance with the provisions of Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018. The above Regulation provides that in case of international judicial cooperation within the EU, prosecutors' offices have powers comparable to those used in domestic investigations. Regarding the international cooperation with the third countries (non-EU), the ability to use their powers is subject to specific conditions stipulated in international treaties and bilateral and multilateral cooperation agreements. Therefore, the judicial authorities and LEAs are not able to use their powers available domestically for conducting inquiries, obtaining information, and using investigative techniques to a full extent when cooperating with non-EU countries.

Criterion 40.19 – Romania is able to form joint investigative teams on its own initiative (e.g., on the basis of its own analysis) or on the basis of Eurojust's or EPPO's request.

Criterion 40.20 – the NOPCML-FIU has relevant powers to exchange information, on its own initiative or upon request, based on reciprocity, through secured channels with foreign institutions having similar functions, or with other competent authorities from other Member

State or third countries, that are bound to similar secrecy keeping, if such communications are made to prevent and combat ML and TF, including in terms of recovery of the proceeds of crimes (Art. 36 (1)). Therefore, the exchange of information related to ML, associated predicate offences or TF with foreign competent authorities is possible, regardless of if these are FIUs.

The Centre for International Police Cooperation is the central national authority in the field of international police cooperation both with the EU and non-EU countries through the dedicated secure information exchange channels (INTERPOL, Europol, liaison officer) with the specialization to exchange operative information including in relation to ML, associated predicate offences and also TF.

The FSA has the right to exchange information with any public authority without limitation on geographic areas (GEO 93/2012). No information has been provided by some other authorities (e.g., Prosecution office, RIS, some supervisors) on the exchange of information indirectly with non-counterparts.

Weighting and Conclusion

The following deficiencies identified: (i) Some authorities, such as RIS, supervisors, NAMSA, did not provide information on legal acts or internal guidelines, where prioritisation process and the timeliness (e.g., deadlines for responding) are stipulated for other forms of international cooperation, especially concerning non-EU countries; as well as no information on the process for safeguarding the information received from foreign counterparties; (c.40.2); (ii) There are no specific legal requirements to provide feedback to requesting foreign competent authorities on the use and usefulness of the information (c.40.4); (iii) There are no explicit legal provisions aimed at covering circumstances when countries should not prohibit or place unduly restrictive conditions on the information exchange with non-EU entities (c.40.5); (iv) No information has been provided on whether requirements on having controls and safeguards aimed at ensuring that information exchanged is used only for the purpose, are applicable to all the LEAs, RIS and supervisors (c.40.6); (v) It is not clear whether all other authorities (apart from the NOPCML-FIU) are able to conduct enquiries on behalf of foreign counterparts (c.40.8); (vi) Inquiries on behalf of foreign counterparts from the third countries by financial supervisors are subject to cooperation agreements (c.40.15); (vii) No information was provided on information exchange with foreign counterparts for intelligence and/or investigative purposes (c.40.17); (viii) The judicial authorities and LEAs are not able to use their powers available domestically for conducting inquiries, obtaining information, and using investigative techniques to a full extent when cooperating with non-EU countries (c.40.18); (ix) No information has been provided by some other authorities (e.g., the POHJCC, RIS, some supervisors) on the exchange of information indirectly with non-counterparts (c.40.20.). **R.40 is rated LC.**

Summary of Technical Compliance – Deficiencies

ANNEX TABLE 1. COMPLIANCE WITH FATF RECOMMENDATIONS

| Recommendations | Rating | Factor(s) underlying the rating |
|---|-----------|---|
| 1. Assessing risks & applying a risk-based approach | LC | <ul style="list-style-type: none"> • Although Romania has a technical mechanism in place to coordinate the actions to assess the risks, not all relevant competent authorities are members of the IC and the Steering Committee that coordinate NRA (c.1.2). • The requirement to provide information on the results of the risk assessment to public authorities (except for supervisory authorities) and SRBs is not explicit (c.1.4). • At the time of the onsite, an action plan to mitigate the national risks was work in progress (c.1.5). • Although the minimum CDD requirements that the obliged entities have to fulfil when conducting simplified CDD is stipulated in regulations, authorities should ensure that some provisions, such as “obtaining less information on BO”, interpreted by the obliged entities in a uniform manner (c.1.8). • There is no explicit legal requirement to enhance the controls aimed at managing ML/TF risks if necessary (c.1.11). • There is no explicit prohibition to apply simplified due diligence measures whenever there is a suspicion of ML/TF (c.1.12). |
| 2. National cooperation and coordination | PC | <ul style="list-style-type: none"> • Romania does not have an overarching national AML/CFT policy which is informed by risks and periodically reviewed; at the time of the onsite visit, an action plan to mitigate the risks identified in the NRA report was “work in progress” (c.2.1). • Although there is a coordination mechanism regarding national AML/CFT policies that also enables information exchange, the intelligence service is not required to exchange the information on mitigation efforts and cooperate with the other authorities; moreover, the IC, which serves as a platform for coordination, does not encompass all the authorities that are legally required to contribute to the process both at the policy making and operational levels (c.2.2-2.3). • There is no formal cooperation and coordination between relevant competent authorities to ensure the compatibility of the AML/CFT requirements with data protection requirements (c.2.5). |
| 3. Money laundering offences | C | |
| 4. Confiscation and provisional measures | C | |
| 5. Terrorist financing offence | C | |
| 6. Targeted financial sanctions related to terrorism & TF | PC | <p>The following shortcomings are identified, notably:</p> <ul style="list-style-type: none"> • Absence of a formal mechanism for identifying targets for designation, based on the designation criteria foreseen by UNSCRs. • Absence of special rules on the evidentiary standard for making proposal for designation, nor information on whether designations are not conditional upon the existence of criminal proceedings. • Absence of formal mechanism for following the procedures established by the UNSCRs. • Absence of explicit requirements for identification of individuals or entities for designation based on reasonable grounds, or reasonable basis. • Absence of procedures or mechanisms for operating ex parte against a person or entity being considered for designation; • At the national level, the freezing mechanism does not extend to funds or other assets of persons and entities acting on behalf of, |

| Recommendations | Rating | Factor(s) underlying the rating |
|--|--------|---|
| 7. Targeted financial sanctions related to proliferation | PC | <p>or at the direction of, designated persons or entities; and no provisions prohibiting the making of any funds or other assets available, directly or indirectly, wholly or jointly, for the benefit of designated persons and entities; no requirement for communicating clear guidance to obliged entities, including DNFBPs that may be holding targeted funds and economic resources, on their obligations for taking action.</p> <ul style="list-style-type: none"> • Absence of publicly available procedures for submitting de-listing requests to the relevant UN sanctions committees. • No mechanism for ensuring the timely communication of these de-listings and unfreezing to FIs and DNFBPs and guidance regarding delisting or unfreezing. <p>It should be noted that most of the above listed shortcomings are mitigated to some extent by the existence of the EU legal framework on which Romania relies, however, material shortcomings remain. The following shortcomings are identified at the national level, notably:</p> <ul style="list-style-type: none"> • Absence of a freezing mechanism extending to funds or other assets of persons and entities acting on behalf of, or at the direction of, designated persons or entities; absence of legislative provisions prohibiting making of any funds or other assets available, directly or indirectly, wholly or jointly, for the benefit of designated persons and entities. • Absence of publicly known procedures or mechanisms enabling listed persons and entities to submit de-listing requests pursuant to UNSCR 1730. • Absence of mechanisms for dealing with contracts, agreements or obligations that arose prior to the date on which an account became subject to PF-related TFS. <p>Most of the above listed shortcomings are mitigated to some extent by the existence of the EU legal framework on which Romania relies, however, material shortcomings remain.</p> |
| 8. Non-profit organisations | PC | <ul style="list-style-type: none"> • Absence of the identification of NPOs that are at risk of TF abuse, TF threats relevant to NPOs; as well as of specific legal requirements to periodically re-assess and mitigate the TF-related vulnerabilities of the NPO sector. • No systemic review of the adequacy of measures, including laws and regulations that relate to the subset of NPOs that may be abused for TF support, have been conducted. • Absence of clear policies that promote accountability, integrity and public confidence of NPOs; limited focus on TF risks when conducting outreach to NPOs; as well as no work undertaken with NPOs to develop best practices to address TF risks and vulnerabilities aimed at protecting NPOs to from TF abuse. • Absence of specific initiatives aimed at encouraging NPOs to conduct transactions via regulated financial channels. • Absence of specific risk-based measures that apply to NPOs vulnerable to TF abuse (as there was no such assessment of risks conducted), therefore supervision and monitoring of such measures cannot exist. • No mechanism for applying effective, proportionate and dissuasive sanctions for violations by NPOs exist other than sanctions for a failure to register BO. • Shortcomings in the area of effective information gathering relating to NPOs and investigative capacity of the LEAs. • No specific points of contacts and procedures established aimed at responding to the international requests involving NPOs suspected of TF abuse (c.8.6). |
| 9. Financial institution secrecy laws | PC | <ul style="list-style-type: none"> • The authorities have not demonstrated that banking and professional secrecy are not enforceable: (i) when sharing information with competent authorities domestically or outside EU Member States; or (ii) when FIs implement R.13 or R.17. |

| Recommendations | Rating | Factor(s) underlying the rating |
|--------------------------------------|---------------|--|
| 10. Customer due diligence | LC | <ul style="list-style-type: none"> • Safekeeping and administration of cash is not subject to the AML/CFT Law (R.10, R.11, R.12, R.15, R.18 to R.21, R.26 R.27 and R.35). • There is no explicit prohibition on the use of fictitious names (c.10.1). • Wire transfers of EUR 1 000 are not subject to CDD (c.10.2). • In the case of covered FIs supervised by the NOPCML, there is no explicit requirement to use reliable sources for the verification of BO in the AML/CFT Law (c.10.5). • In the case of covered FIs supervised by the NOPCML, there is no explicit requirement to understand the purpose and nature of a business relationship (c.10.6). • In the case of covered FIs supervised by the NOPCML, there is no specific obligation to understand the customer's business profile (c.10.8). • Covered FIs supervised by the NBR and NOPCML are not explicitly required to hold information on the principal place of business, if different to the address of the registered office or headquarters (c.10.9). • In the case of covered FIs supervised by the NOPCML, it is not clear what information must be collected for legal arrangements, such as trusts (c.10.9). • The definition of BO for foundations does not apply to individual beneficiaries (c.10.10). • One element of the definition of BO (type 3) does not follow principles established under c.10.10) (c.10.10). • There is no explicit requirement for EDD to include reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary, at the time of pay-out. (c.10.13). • Except for covered FIs supervised by the FSA, there are no clear provisions requiring the extent of CDD applied by FIs to depend on materiality and timing of application to take into account whether and when CDD measures have previously been undertaken and the adequacy of the data obtained (c.10.16). • Except for covered FIs supervised by the FSA, there is no provision to address the risk of tipping-off linked to the performance of CDD (c.10.20). |
| 11. Record keeping | LC | <ul style="list-style-type: none"> • There is no explicit requirement for keeping transaction records that are sufficient to permit the reconstruction of individual transactions (c.11.3). |
| 12. Politically exposed persons | PC | <ul style="list-style-type: none"> • EDD measures are not required to be applied to former PEPs that continue to present a standard or lower PEP risk – where PEP risk has not yet been fully extinguished (c.12.1 and c.12.2). • Definitions for close associate and family member of PEPs are too narrow (c.12.3). • The requirement to consider submitting an STR whenever a PEP is a beneficiary of a life insurance policy is based on the identification of unusual elements, rather than higher risks (c.12.4). |
| 13. Correspondent banking | PC | <ul style="list-style-type: none"> • Some correspondent banking requirements are considered automatically fulfilled where respondents are in EEA Member States (c.13.1 and c.13.2). |
| 14. Money or value transfer services | PC | <ul style="list-style-type: none"> • The authorities have not explained how they take joint action to identify and sanction non-authorised MVTs services (c.14.2). • There is no requirement for agents of post office giros institutions to be identified (c.14.4). • It has not been explained whether post office giro institutions supervised by the NOPCML are required to include agents in their AML/CFT programme and monitor compliance therewith (c.14.5). |

| Recommendations | Rating | Factor(s) underlying the rating |
|---|---------------|---|
| 15. New technologies | PC | <ul style="list-style-type: none"> • The NRA does not include a separate, comprehensive analysis of ML/TF risks that may arise in relation to the development of new products and new business practices (c.15.1). • There is no explicit requirement for FIs supervised by the FSA to identify and assess ML/TF risks that may arise from the use of developing technology (c.15.1). • There is no explicit requirement for FIs supervised by the NBR or NOPCML to conduct risk assessments mandated under c.15.1 prior to launch (c.15.2(a)). • There is no explicit requirement for FIs supervised by the NBR or NOPCML to take appropriate measures to manage and mitigate risks (c.15.2(b)). • There is not a comprehensive assessment of the risk presented by VAs and VASPs (c.15.3). • The authorities have not summarised measures taken to address risks identified (c.15.3). • The NOPCML is not given powers to prevent criminals or their associates from holding, or being the beneficial owner of, a significant or controlling interest in a VASP, or holding a management function (c.15.4) • The NOPCML has not explained what action is taken to identify illegal activity (c.15.5). • The frequency and intensity of supervisory effort does not take account of the degree of discretion allowed to FIs under the RBA (c.15.6). • Bespoke guidance for VASPs is limited (c.15.7). • The range of fines that may be applied for TFS do not appear to be proportionate (c.15.8). • The range of sanctions for dealing with failure to report suspicion of ML/TF is not sufficiently proportionate, since it is not directly subject to a criminal sanction (c.15.8). • Not all preventive measures apply to covered VASPs (c.15.9). • The occasional transaction designated threshold for VASPs is requirement to EUR 15 000 (rather than EUR 1 000) (c.15.9(a)). • No provisions are in place to deal with VA transfers (c.15.9(b)). |
| 16. Wire transfers | LC | <ul style="list-style-type: none"> • Post office giro institutions are not responsible for activities conducted by agents (c.16.16). |
| 17. Reliance on third parties | LC | <ul style="list-style-type: none"> • Covered FIs are not required to satisfy themselves that third parties relied upon apply CDD and record-keeping measures that are in line with R.10 and R.11 (c.17.1). • The risk that is presented by EEA countries takes account only of the requirement that they apply the same rules as Romania (based on the AMLD) - and not other information that may be relevant to an assessment of risk (c.17.2). • It is not specified that, where reliance is placed on a third party that is part of the same financial group, preventive measure in line with R.10 to R.12 and R.18 should be applied (at group level) (c.17.3). • Reliance may not be placed on a part of a group located in a high-risk third country, as opposed to mitigation of risk presented by a higher risk country. |
| 18. Internal controls and foreign branches and subsidiaries | LC | <ul style="list-style-type: none"> • Requirements for screening procedures do not cover all employees (c.18.1(b)). • In the case of FIs supervised by the NOPCML, the obligation to put in place an independent audit function is not absolute (c.18.1(d)). • The measures that must be covered by group-wide programmes against ML/TF are not clearly articulated, e.g., there is no explicit reference to sharing information for the purposes of CDD or risk management (c.18.2). • There is no requirement to apply home country AML/CFT measures where a subsidiary is in a Member State that applies less strict requirements (c.18.3). |

| Recommendations | Rating | Factor(s) underlying the rating |
|---|--------|---|
| 19. Higher-risk countries | LC | <ul style="list-style-type: none"> It is not specified that countermeasures should be proportionate to risk (c.19.2). The country is not able to apply countermeasures independently from the FATF or EC. (c.19.2). |
| 20. Reporting of suspicious transaction | LC | <ul style="list-style-type: none"> Covered FIs, except for the entities operating in insurance and securities sectors, are not explicitly required to report attempted transactions. Some VA-related services, some services offered by legal professionals, TCSPs and accountants as well as safekeeping and administration of cash – as defined by the FATF – are not subject to AML/CFT preventative measures. This has an impact on R.20 (c.20.2). |
| 21. Tipping-off and confidentiality | LC | <ul style="list-style-type: none"> Some VA- related services, some services offered by legal professionals, TCSPs and accountants as well as safekeeping and administration of cash – as defined by the FATF – are not subject to AML/CFT preventative measures. This has an impact on R.21. |
| 22. Customer diligence | PC | <p>DNFBPs: due</p> <ul style="list-style-type: none"> There is no explicit requirement to ensure that casinos must be able to link CDD information for a particular customer to the transactions that the customer conducts in the casino (c.22.1(a)). There is no explicit requirement that CDD measures should be conducted by a real estate agent for both the purchaser and the vendor of the property for which the agent acts (c.22.1(b)). For lawyers, notaries and other legal professions, there is no reference to management of securities accounts (see c.22.1(d)). For accountants, there is no definition for “tax and financial matters” and so it is not possible to confirm that all elements are met (see c.22.1(d)). The listed activities of TCSPs do not cover acting as a secretary (see c.22.1(e)). <p><u>R.10</u></p> <ul style="list-style-type: none"> There is no prohibition on keeping anonymous accounts or accounts in obviously fictitious names (c.10.1). There is no explicit requirement to use reliable sources for the verification of BO in the AML/CFT Law (c.10.5). There is no explicit requirement to understand the purpose and nature of a business relationship (c.10.6). There is no specific obligation to understand the customer’s business profile (c.10.8). There is no explicit requirement to hold information on the principal place of business if different to the address of the registered office of headquarters (c.10.9). It is not clear what information must be collected for legal arrangements (c.10.9). The definition of BO for foundations does not apply to individual beneficiaries (c.10.10). One element of the definition of BO does not follow principles established under c.10.10 (c.10.10). There are no clear provisions requiring the extent of CDD applied to depend on materiality and timing of application to take into account whether and when CDD measures have previously been undertaken and the adequacy of the data obtained (c.10.16). There is no provision to address the risk of tipping-off linked to the performance of CDD (c.10.20). <p><u>R.11</u></p> <ul style="list-style-type: none"> Shortcomings for covered FIs under R.11 are equally applicable to covered DNFBPs. <p><u>R.12</u></p> |

| Recommendations | Rating | Factor(s) underlying the rating |
|--|--------|--|
| | | <ul style="list-style-type: none"> • Shortcomings for covered FIs under R.12 are equally applicable to covered DNFBPs. <p><u>R.15</u></p> <ul style="list-style-type: none"> • The NRA does not include a separate, comprehensive analysis of ML/TF risks that may arise in relation to the development of new products and new business practices (c.15.1). • There is no explicit requirement to conduct risk assessments of new products and business practices, and use of technology prior to launch (c.15.2(a)). • There is no explicit requirement to take appropriate measures to manage and mitigate risks from such assessments (c.15.2(b)). <p><u>R.17</u></p> <ul style="list-style-type: none"> • Shortcomings for covered FIs under R.12 are equally applicable to covered DNFBPs. |
| 23. DNFBPs: Other measures | LC | <ul style="list-style-type: none"> • The gap in the application of preventive measures to DNFBPs highlighted under R.22 is also relevant here. <p><u>R.20 and R.21</u></p> <ul style="list-style-type: none"> • Shortcomings for covered FIs under R.20 and R.21 are equally applicable to covered DNFBPs. <p><u>R.18</u></p> <ul style="list-style-type: none"> • There is no explicit requirement for the compliance officer to be appointed at management level (c.18.1(a)), and requirements for screening procedures do not cover all employees (c.18.1(b)). • The obligation to put in place an independent audit function is not absolute (c.18.1(d)). • Requirements to ensure that foreign branches and majority-owned subsidiaries apply AML/CFT measures consistent with home country requirements do not apply (c.18.3) <p><u>R.19</u></p> <ul style="list-style-type: none"> • Shortcomings for covered FIs under R.19 are equally applicable to covered DNFBPs. |
| 24. Transparency and beneficial ownership of legal persons | PC | <ul style="list-style-type: none"> • Processes for obtaining and recording basic and BO information for associations and foundations are not publicly available (c.24.1). • The NRA report considers threats and extent to which legal persons are owned by non-residents but does not clearly articulate what ML risks are presented by different types of legal persons. The assessment of TF is based on a number of contextual factors, rather than threats and vulnerabilities (c.24.2). • Legal persons are not required to maintain the information specified under c.24.3 or to keep it up to date (c.24.4 and c.24.5). • Limited liability companies are not required to record information on the nature of voting rights (c.24.4). • Powers are not available to local trade registers to request the records of legal persons to ensure that obligations to register changes are complied with (c.24.5). • Measures are not in place to ensure that basic information for associations and foundations is accurate or updated on a timely basis (c.24.5). • No time limit is set for transfer of ownership to be registered in the share register of a joint stock company (c.24.5). • It has not been explained what “up to date” means in the context of a requirement for legal persons to hold BO information, and how soon beneficial owners are required to report changes to the legal person (c.24.7). • No explicit timeframe is set for BO information to be updated in the register maintained by the MoJ for associations and foundations when there is a change (c.24.7). • In the case of legal persons established before the two registers came into force, transitional provisions dealing with reporting |

| Recommendations | Rating | Factor(s) underlying the rating |
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| | | <p>changes to BO information are unclear and may serve to limit cases in which changes to BO are reported (c.24.7).</p> <ul style="list-style-type: none"> • No bespoke mechanism has been put in place to ensure that companies cooperate with competent authorities to the fullest extent possible in determining BO (c.24.8). • No requirements are placed on legal persons (or administrators or liquidators) to maintain BO information post dissolution (c.24.9). • No provisions are in place covering bearer share warrants (c.24.11). • There is no mechanism for disclosing or recording the nominee status of a director (where permitted) or shareholder (c.24.12). • Penalties do not apply for: (i) failure to provide the information at c.24.3 to 24.5 to the respective registrar; (ii) failure by legal persons to hold information listed under c.24.3; and (iii) failure to maintain information under c.24.9 (c.24.13). • There are no policies or procedures covering monitoring of the quality of assistance that is received, or evidence of monitoring (c.24.15). |
| 25. Transparency and beneficial ownership of legal arrangements | LC | <ul style="list-style-type: none"> • There is no requirement to hold information on other regulated agents of, and service providers to, the trust (c.25.1(b) and (c)). • The range of sanctions for trustees that are legal persons with very low turnover and fail to apply requirements in the AML/CFT Law means that the fine on that trustee would be low (c.25.7). • The range of sanctions for professional trustees that are individuals that fail to apply requirements in the AML/CFT Law does not appear proportionate (c.25.7). |
| 26. Regulation and supervision of financial institutions | LC | <ul style="list-style-type: none"> • The scope of offences that may be considered for exchange offices is too narrow and there is no definition of “significant shareholder”. Legal provisions dealing with changes subsequent to initial licencing of exchange offices are not sufficiently clear (c.26.3). • The power to request an extract from a criminal record for exchange offices is dependent upon express written consent (c.26.3). • Measures are not in place to prevent criminals from controlling or holding a management function in a postal service provider (c.26.3). • Information has not been provided on provisions in place to prevent criminals or their associates from holding (or being the beneficial owner of) a significant or controlling interest in a collective investment undertaking marketing its units (c.26.3). • For IOSCO and IAIS principles, insufficient evidence has been provided to demonstrate that regulation and supervision are in line with the core principles (c.26.4). • The frequency and intensity of supervisory effort does not take account of the degree of discretion allowed to FIs under the RBA (c.26.5). |
| 27. Powers of supervisors | LC | <ul style="list-style-type: none"> • Authorisation of use of NBR sanctions may be limited in respect of some breaches that are not serious, repeated, or systematic, including for reporting of suspicion (c.27.4). |
| 28. Regulation and supervision of DNFBPs | PC | <ul style="list-style-type: none"> • NGO licensing powers do not address senior management more generally or cases where a beneficial owner or legal representative is an associate of a criminal (c.28.1(b)). • SRBs do not have express powers under the AML/CFT Law to conduct on-site inspections (c.28.4 (a)). • There are no sectoral measures in place to prevent criminals or their associates from holding interests or management functions in real estate agents or DPMS (c.28.4(b)). • Sectoral measures in place for lawyers do not clearly cover ML, TF or all categories of offence that are designated by the FATF |

| Recommendations | Rating | Factor(s) underlying the rating |
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| | | and do not deal with associates of lawyers that are criminals (c.28.4(b)). |
| | | <ul style="list-style-type: none"> • Sectoral measures in place for accountants do not clearly cover TF or all categories of offence that are designated by the FATF, do not apply to directors of accounting firms, and do not deal with associates of accountants that are criminals (c.28.4(b)). • Sectoral measures in place for tax advisors do not clearly cover ML, TF or all categories of offence that are designated by the FATF, do not deal adequately with firms of tax advisors, and do not deal with associates of tax advisors that are criminals (c.28.4(b)). • Supervisors of TCSPs rely on general supervisory powers to conduct ongoing assessments of reputation and integrity, which are not conducted for all TCSPs or on an ex-ante basis (c.28.4(b)). • Sectoral measures do not apply to covered professionals that are not members of a professional body or which hold a foreign qualification, e.g., accountants (c.28.4(b)). • Measures in place under the Company Law to prevent criminals from founding legal persons or holding a senior management function do not clearly cover TF or all categories of offence that are designated by the FATF, and do not apply to shareholders acquiring interests post formation (c.28.4(b)). • Risk-based NOPCML procedures do not adequately take account of internal controls, policies, and procedures (c.28.5(b)). • Cooperation agreements between the NOPCML and SRBs do not address the assessment of adequacy of controls, policies of procedures (c.28.5(b)). |
| 29. Financial intelligence units | LC | <ul style="list-style-type: none"> • There is no explicit requirement to use dedicated, secure, and protected channels for the disseminations of its analysis and communicating with national competent authorities (c.29.5). |
| 30. Responsibilities of law enforcement and investigative authorities | C | |
| 31. Powers of law enforcement and investigative authorities | C | |
| 32. Cash couriers | PC | <ul style="list-style-type: none"> • Romania has not supplemented Regulation (EU) 2018/1672 requirements and thus relevant obligations to declare or disclose apply only when <i>cash</i> is entering or leaving the EU via Romania (c.32.1). • Deficiencies identified under c.32.1 apply c.32.2 and 32.3. • Sanctions for submitting false declaration or disclosure are not dissuasive (c.32.5). • Co-ordination among NCA and Border Police does not include the exchange of information obtained through the declaration/disclosure process or notifying about suspicious cross-border transportation incidents (c.32.7). |
| 33. Statistics | PC | Romania does not maintain comprehensive statistics on all key parts relevant to the effectiveness and efficiency of their AML/CFT system. |
| 34. Guidance and feedback | LC | <ul style="list-style-type: none"> • The legal basis for enforcing compliance with NOPCML sectoral regulations is not clear. • Most of the SRBs have not yet issued regulations to support implementation of the new AML/CFT Law. • No information has been provided on feedback mechanisms by LEAs or SRBs. |

| Recommendations | Rating | Factor(s) underlying the rating |
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| 35. Sanctions | PC | <ul style="list-style-type: none"> • Shortcomings under c.27.4 and c28.4(c) apply (c.35.1). • There is no clear criminal or administrative sanction available for less serious, isolated failures by FIs supervised by the NBR to report suspicion of ML/TF, and no general criminal offence for failing to report (c.35.1). • It is not clear that fines can be applied proportionately to lesser breaches of TFS requirements (c.35.1). • There is no mechanism for applying effective, proportionate, and dissuasive sanctions for violations by NPOs or persons acting on behalf of those NPOs (c.35.1). • Sanctions may not be applied to directors and senior management for breaches of TFS requirements (c.35.2). |
| 36. International instruments | C | |
| 37. Mutual legal assistance | LC | <ul style="list-style-type: none"> • Romania does not have a clear formalised process for timely prioritisation and execution of MLA requests; there is no case management system aimed at monitoring progress on requests (c.37.2). |
| 38. Mutual legal assistance: freezing and confiscation | C | |
| 39. Extradition | LC | <ul style="list-style-type: none"> • The absence of case management system for timely execution and prioritisation of extradition requests is a minor technical limitation (c.39.1). |
| 40. Other forms of international cooperation | LC | <ul style="list-style-type: none"> • No information on the widest possible range of international cooperation has been provided by the RIS and Police (c.40.1). • Some authorities, such as RIS, supervisors, NAMSA, did not provide information on or internal guidelines, where prioritisation process and the timeliness (e.g., deadlines for responding) are stipulated for other forms of international cooperation, especially concerning non-EU countries; as well as no information on the process for safeguarding the information received from foreign counterparties. (c.40.2). • There are no specific legal requirements to provide feedback to requesting foreign competent authorities on the use and usefulness of the information (c.40.4). • There are no explicit legal provisions aimed at covering circumstances when countries should not prohibit or place unduly restrictive conditions on the information exchange with non-EU entities (c.40.5). • No information has been provided on whether controls and safeguards aimed at ensuring that information exchanged is used only for the purpose, are applicable to all LEAs, RIS and supervisors (c.40.6). • It is not clear whether all other authorities (apart from the NOPCML- FIU) are able to conduct enquiries on behalf of foreign counterparts (c.40.8). • Inquiries on behalf of foreign counterparts from the third countries by financial supervisors are subject to cooperation agreements (c.40.15). • No information was provided on information exchange with foreign counterparts for intelligence and/or investigative purposes (c.40.17). • The judicial authorities and LEAs are not able to use their powers available domestically for conducting inquiries, obtaining information, and using investigative techniques to a full extent when cooperating with non-EU countries (c.40.18). • No information has been provided by some other authorities (e.g., the POHJCC, RIS, some supervisors) on the exchange of information indirectly with non-counterparts (c.40.20.). |

GLOSSARY OF ACRONYMS¹¹⁹

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| AML/CFT Law | Law no. 129/2019 for the prevention and control of money laundering and terrorist financing, as subsequently revised by Law no. 315/2019, Law no. 101/2021 and Law no. 102/2021 |
| Associations and Foundations Law | Government Ordinance no. 26/2000 on associations and foundations |
| BELAR | Body of Expert and Licensed Accountants of Romania (SRB) |
| BRA | Business risk assessment |
| CARIN | Camden Asset Recovery Inter-Agency Network |
| CC | Criminal Code |
| CEPs | Compliance Enhancing Procedures of MONEYVAL |
| Company Law | Law no. 31/1990 on companies |
| CPC | Criminal Procedure Code |
| CTA | Chamber of Tax Advisors (SRB) |
| CTR | Cash transaction report |
| DIOCT | Directorate for the Investigation of Organised Crime and Terrorism |
| EMI | Electronic money institution |
| ETR | External transfer report |
| Fiscal Administration | National Agency for Fiscal Administration |
| Fiscal Procedure Code | Law 207/2015 on the Fiscal Procedure Code |
| FSA | Financial Services Authority |
| FSA AML/CFT Regulation | FSA Regulation no. 13/2019 on the establishment of measures to prevent and combat ML and TF through the financial sectors supervised by the FSA |
| FTR | Fund transfer report |
| IC | Interinstitutional Council |
| Law on Terrorism | Law 535/2004 on Preventing and Fighting Terrorism |
| Ministry of Finance | MoF |
| Ministry of Foreign Affairs | MoFA |
| Ministry of Internal Affairs | MoIA |

¹¹⁹ Acronyms already defined in the FATF 40 Recommendations are not included into this Glossary.

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| Ministry of Justice | MoJ |
| NAD | National Anti-Corruption Directorate |
| NAMSA | The National Agency for the Management of Seized Assets |
| NARB | National Association of the Romanian Bars (SRB) |
| NBR | National Bank of Romania |
| NBR AML/CFT Regulation | NBR Regulation No. 2/2019 on preventing and combating of ML and TF |
| NCA | Romanian Customs Authority |
| NGO | National Gambling Office |
| NOPCML | National Office for Prevention and Control of Money Laundering |
| NOPCML AML/CFT Rules | Implementing Rules approved by Order of the President of the Office No 37/2021 |
| NOPCML-FIU | Financial intelligence unit in the NOPCML |
| NTRO | National Office of the Trade Register |
| NUNPR | National Union of Notaries Public of Romania (SRB) |
| Obligated entity | Person(s) subject to AML/CFT Law |
| OCG | Organised criminal group |
| PI | Payment institution |
| POHJCC | Prosecutor's Office attached to the High Court of Cassation and Justice |
| Police | General Inspectorate of the Romanian Police |
| PSP(s) | Payment service providers |
| Public Ministry | Consists of the POHJCC, Prosecutor's Offices of the Courts of Appeal, Military Prosecutor's Office of the Military Court of Appeal, Prosecutor's Offices of the Courts (including the Prosecutor's Office of the Juvenile and Family Court of Brasov), Prosecutor's Offices of the Military Courts and Prosecutor's Offices of the Courts of First Instance. |
| RBA | Risk-based approach |
| RIS | Romanian Intelligence Service |
| Trade Register Law | Law no. 26/1990 regarding the trade register office |

MONEYVAL

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May 2023

Anti-money laundering and counter-terrorism financing measures

Romania

Fifth Round Mutual Evaluation Report

This report provides a summary of AML/CFT measures in place in Romania as at the date of the on-site visit (21 September to 4 October 2022). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Romania's AML/CFT system and provides recommendations on how the system could be strengthened.