

Direct investments from the EU also under the microscope of the CEISD

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Since December 6 of last year, certain direct investments from EU countries with a value of more than EUR 2 million in Romania must be registered respectively approved before the investment begins.

Planned direct investments in the following areas of activity are affected by this:

- a. Security of citizens and communities;
- b. Border security;
- c. Energy security;
- d. Safety of transportation;
- e. Security of the basic supply systems;
- f. Security of the critical infrastructure;
- g. Security of IT and communication systems;
- h. Security of financial, tax, banking and insurance activities;
- i. Safety of the manufacture and circulation of weapons, ammunition, explosives and toxic substances;
- j. Industrial safety;
- k. Civil protection;
- l. Agricultural and environmental protection and
- m. Protection of the privatization of state-owned companies or their management.

Development

The EU initially introduced a uniform EU-wide "framework for screening foreign direct investments in the Union" with Regulation (EU) 2019/ 452. In April 2022, the Emergency Ordinance No. 46/2022 was issued in Romania to specify this framework. This initially required investors from non-member states to register a planned investment with the expert commission "CEISD" (*Comisia pentru Examinarea Investițiilor Straine Directe*) prior to actual implementation and to postpone the actual implementation of the investment until approval is received (so-called *standstill obligation*).

After Romania issued Emergency Ordinance No. 108/2023 on December 6, 2023, supplementing the above-mentioned regulations, the obligations were extended; they now also expressly apply to EU investors.

Relevant key points for EU investors

The term investment covers any investment made by a (foreign/EU) investor to create or maintain a **lasting and direct relationship between the investor** and the company, for which capital is provided for the continued pursuit of an **economic activity** in Romania. This includes investments that enable an actual participation in the management or control of a company

Unlike previously, when the notification and audit obligation applied to investors who gained control of the company concerned through their investment, now investments that only lead to a minority shareholding but allow the investor to actively participate in the management must ~~now~~ also be notified.

If, in the case of an (EU or non-EU) investment in the relevant areas, there is a change of control over one or more companies - which is also the case if a joint company (*societate in comun*) is created - the obligation to obtain approval applies regardless of whether or not the investment constitutes a concentration between undertakings that must be notified to the Competition Council.

The date of the approval requirement is **before** the start of the investment. A breach of this can be sanctioned with a fine of up to 10% of the investor's global turnover. Even if such a fine currently only applies to investors from third countries, it is likely to be extended to EU investments.

Any investments that have been made but not notified may be examined ex officio. They may be canceled if it is determined that they could affect the security or public order of Romania or EU projects/programs.

A fee of EUR 10,000 must be paid to CEISD when applying for the examination and approval of the investment; this will be refunded if the authorities determine that the investment was not subject to approval.

The application review by the CEISD is based on Regulation (EU) 2019/425 and can lead to the following results:

- Approval of the investment;
- conditional approval of the investment (measures or obligations regarding the behavior or structure of the investor are determined) or
- Rejection of the investment (if it affects the security or public order of Romania or the projects/programs of the EU).

Conclusion

Due to the newly introduced obligations, the preliminary review of the parameters of any intended investment above the EUR 2 million threshold is extremely important; we consider it advisable to submit the application for its review and approval by the CEISD as early as possible.

The duration of the review process must be taken into account both during planning and when drafting the contract.

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