New legislation on the approval of direct investments

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Foreign investments are a key component of Romania's national economic development.

Emergency Ordinance No. 46/2022 ("**EO 46**") stipulates an authorization requirement for certain direct and new investments and has been amended several times.

Context

In order to counteract risks to national security and economic order, direct investments are subject to review and, where applicable, approval by a specialized commission subordinate to the Romanian Competition Council, in accordance with EO 46.

Following amendments to the EO 46 and the Competition Law on December 6, 2023 and December 20, 2024, **these provision now also apply to EU investors and Romanian investmentors**.

In **February 2025**, the Competition Council published a draft regulation on guidelines and procedural issues.

Foreign investors, EU investors and Romanian investors are therefore obliged to notify their investment to the Commission and await its approval prior to actual implementation (*standstill obligation*).

Direct investments

The definition of direct investment is very broad. It covers, among others, investments that enable effective participation in the management or control of a company or those that, while resulting in the acquisition of a minority shareholding, nonetheless allow for active involvement in management decisions.

This includes the granting of loans, increases in the share capital of Romanian companies and other forms of investment.

Reporting obligations

A distinction is made between three categories of investments:

(i) Foreign direct investments,

(ii) EU investments,

(iii) New investments.

A reporting obligation exists if the investment fulfills both of the following conditions:

1. It takes place in one of the (broadly) defined areas of activity that the Supreme Council for National Defense ("**CSAT**") has defined as follows:

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

2. Its value exceeds EUR 2 million (including staged investments, which are aggregated).

If an investment (whether by an EU or non-EU investor) leads to a change of control over a company in one of the areas of activity listed above, including through joint ventures, then approval is required, regardless whether the investment is notifiable to the Competition Council as a merger.

If an investment subject to authorization is made without notification, the investor may be fined up to **10% of the investor's global turnover and the investment project** may be suspended. If the investment affects Romanian national security, public order or the projects/programs of the EU, it may also be annulled.

3. **Approval procedure**

The approval process comprises several <u>stages</u>:

1. Application for approval;
2. Assessment of the impact on national security;
3. Decision on the application, as follows:

   - <u>Approval</u> of the investment;

- Conditional approval of the investment (subject to behavioral or structural commitments by the investor);
- Rejection of the investment (if it affects the security or public order of Romania or EU projects/programs).

4. **Additional measures**

Additional security measures may be imposed, including:

- Oversight of management
- Restrictions on technology transfer
- Restricted access to sensitive information

A **fee of EUR 10,000** is payable upon application for the examination and approval of the investment. If the investment is determined not to be subject to approval, the fee will be refunded.

Deadlines

The following deadlines and milestones apply:

- Issuance of the proposal by the Commission: **60 days** from submission of a complete application;
- Final decision by the Competition Council: **30 days** (usually earlier in practice);
- Input from various authorities (if necessary) (e.g. the Romanian intelligence service): **20 days** from submission of application;
- Input from CSAT: **90 days** from submission of application.

Conclusion

The approval requirement for significant investments in Romania covers a wide range of transactions and activities. Given the significant penalties, **thorough due diligence is essential** before carrying out relevant investments.

Contact and further information:

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