

Legal Newsflash

Romania formally extends FDI screening to EU investors

The FDI screening procedure in Romania has recently been subject to another set of amendments through Government Emergency Ordinance no. 108/2023 for the amendment of Competition Law no. 21/1996, as well as other legal enactments, published in the Official Gazette on 6th December 2023.

The new legislation contains three important points:

1. Romania formally becomes a catch-all jurisdiction - EU investors (including Romanian investors) are now required to undergo FDI screening if the filing conditions are met:

Under the newly updated legal framework, the requirement to undergo the FDI screening procedure also applies to EU investors, provided that the general FDI filing conditions are met, i.e. (i) monetary threshold - above EUR 2 million and (ii) investment targeted sector – considered to be of national security relevance.

The concept of EU investors also covers Romanian investors, as the law does not expressly exclude application of the FDI rules for national investors. Also, similar to the case of non-EU investor, FDI screening will apply in respect of both M&A and green-field investments.

Based on the new rules, from a procedural standpoint, EU investors are intended to benefit from reduced terms: for the case of non-problematic EU investments the screening timeline is a bit lighter and, also, the document issued at clearance is represented by an address, and not a decision, as in the case of non-EU investors. In practical terms, it remains to be seen whether this will translate into a more expedite procedure for EU investors.

2. Below-control investments are caught by the FDI legislation if the investor gains the right to effective participation in the management of an undertaking:

This amendment is in line with the wording included in the EU FDI Screening Regulation and is meant to capture instances where the investors gain the right to appoint member(s) of the undertaking's governing bodies, even if it does not acquire control of the undertaking, as per the merger rules.

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It is not yet entirely clear how this will apply in practice – there is no guidance available, for example, in relation to a minimum shareholding that would trigger the obligation to undergo the FDI screening procedure.

3. Examination fee set for EUR 10,000:

Following intense debate, the updated version of the FDI legislation includes an examination fee of EUR 10,000, due at submission of the application.

For the event in which the Commission for the Examination of Foreign Direct Investments rules that the investment does not fall within the FDI screening scope of application, the examination fee is paid back to the investor.

A number of aspects are yet to be further clarified. As it was the case before this new amendment, but now also for EU investors (including Romanian investors), once the target has a nexus with Romania, and is active in the relevant strategic activities, the investor should perform a thorough FDI risk assessment and factor-in potential FDI approval proceedings in the deal timeline.

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