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Legal Newsflash

Romania further clarifies and tightens FDI screening rules

The FDI screening procedure in Romania has recently been amended through Law no. 164/2023 to approve Government Emergency Ordinance no. 46/2022 on measures for applying EU Regulation 2019/452 establishing a framework for the screening of foreign direct investments into the European Union.

The new legislation contains four important points:

1. Broader scope of application – EU investors are now required to undergo FDI screening if the transaction represents an economic concentration:

Under the updated legal framework, the requirement to undergo the FDI screening procedure also applies to EU investors if the transaction also represents an economic concentration under the merger rules.

The concept of EU investors also covers Romanian investors, as the law does not expressly exclude application of the FDI rules for national investors.

For greenfield investments, EU investors are not required to undergo the screening process. However, the screening requirement will continue to apply in relation to greenfield investments contemplated by non-EU investors.

2. No authorization fee yet:

Following intense debate, the final version of the legislation does not include any administrative fee to be paid by investors filing for clearance under the FDI rules.

3. Secondary legislation will be issued by the Competition Council in relation to the notion of „*value of the investment*":

Law 164/2023 states that the definition of the concept of „value of investment" will be clarified through secondary legislation to be issued by the Competition Council. This is an important point, because one of the conditions that triggers the requirement to undergo FDI screening is if the value of the investment is above Euro 2 million.

Under the current legal practice of the competition authority, the value of an investment is linked to the price of the transaction or the value of the estimated costs associated with a specific investment.

4. Clarification on the possibility to unwind an investment:

The recent amendment clarifies that if a foreign investment (i) was carried out in breach of the FDI rules and (ii) is deemed to pose a risk to national security, on the grounds of security or public order, or has a negative impact on projects and programmes of interest to the EU – the FDI authorities can propose the cancellation of the investment.

Under this scenario, the final say rests with the Romanian Government, which is the authority with ultimate power to issue a decision requiring the unwinding of an investment.

A number of aspects are yet to be further clarified. However, we expect that practical application of the legislation is likely to lead to more certainty as to which transactions fall under the scope of FDI screening or may raise concerns. In the meantime, 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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