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Romania FDI screening mechanism - does it apply to everything?

In line with global and European security trends, Romania has implemented through Government Emergency Ordinance 46/2022 ("**GEO 46/2022**") stricter FDI screening regulations than the ones existent before.

In a nutshell, any European (*including Romanian)* or foreign investment of any nature, intended to establish or maintain lasting, direct relationships between the investor and the Romanian business receiving funds, including those enabling active involvement in the management of the company exceeding €2 million, made in a sensitive sector as outlined in the Supreme Council of National Defense ("**CSAT**") Decision no 73/2012 and in direct investments ("**CEISD**"). Under certain circumstances, the €2 million threshold may be lower, such as for investments in critical national infrastructures.

It's important to note that even minority acquisitions may trigger FDI screening - for example, a 10% stake acquisition has been considered within FDI regulations (Decision 198/2024). Furthermore, Romania's FDI regime encompasses the concept of "new investment," expanding oversight to initial investments, capacity expansions or diversifications of production.

In essence, any investment, normally over €2 million, could fall under FDI regulations, particularly considering CEISD's broad interpretation of FDI scope, including of the sensitive sectors concerned.

In 2024, public information reveals a notably active CEISD, which has issued 257 decisions for investments which did not raise security issues. In fact, from the public information available, only one transaction has been conditionally approved (through Government decision no. 35/12.02.2024). Public statements from the CEISD General Secretary indicate that further conditional approvals are anticipated in the future.

The level of activity of CEISD is even greater, as for EU investments it is the Competition Council who sends approval letters to the concerned investor, and as in some cases CEISD issued non-intervention letters, both of which are not published.

Despite the numerous confidential sections in CEISD's decisions, likely for security reasons, making it challenging to discern the rationale behind its analysis of whether an investment falls under the FDI regime, it has become clearer over time how the FDI framework operates.

Additionally, the FDI framework is being continuously clarified. Recently, the draft guidelines for GEO 46/2022 was published, providing valuable insights into how the investment value should be calculated.

Further on, we provide below insights into CEISD's practices concerning specific types of investments.

from two perspectives:

- Non-EU intra-group transactions fall within the scope of FDI (e.g., Decision 5/2025, Decision 82/2024, Decision 5/2024, Decision 102/2024). Please be aware that the fact that there is no change in the ultimate beneficiary and the operation targets only the intermediate ownership chain is irrelevant. Moreover, even in cases where the change of control does not affect the entity in Romania, as it occurs upstream in the ownership chain, the investment has been considered to fall within the scope of FDI regulations.
- As for EU intra-group transactions, until now, CEISD has regarded them as outside the application of FDI regulations.
- **Real estate transactions** – Given that GEO 46/2022 does not include specific provisions regarding real estate transactions, being analysed under FDI general screening criteria, CEISD seems to have crystallized in its practice two different approaches:

- On several occasions, CEISD has determined that pure real estate asset deals (concerning only the immovable property and not a business) fall outside the scope of FDI regulations.
- At the same time, CEISD has considered that share deals (the indirect acquisition of real estate through the purchase of a company managing the property either by renting or developing logistic parks) fall under FDI scope (e.g., Decision 31/13.02.2025; Decision 4/14.01.2025; Decision 97/30.05.2024).

  Such investments were included in the sensitive domain of "*the security of citizens and communities*", without making available the reasoning for this or any other criteria taken into consideration - e.g., criteria regarding the proximity of the real estate to an essential infrastructure etc.

- **New investments made with internal funds** – CEISD maintains a strict approach, considering that investments such as capacity expansion or product diversification, even when financed through the investor’s own resources, rather than external capital, still fall within the scope of FDI

1-year notification covering multiple such investments.

In light of the above, investors must stay alert, carefully assessing each investment on a case-by-case basis to determine whether FDI notification is required. The stakes are high, as failing to secure the CEISD's approval before implementation of the investment can result in substantial penalties (up to 10% of annual turnover) and contracts through which such an investment is made are deemed null and void. In line with global and European security trends, Romania has implemented through Government Emergency Ordinance 46/2022 ("**GEO 46/2022**") stricter FDI screening regulations than the ones existent before.

In a nutshell, any European (*including Romanian)* or foreign investment of any nature, intended to establish or maintain lasting, direct relationships between the investor and the Romanian business receiving funds, including those enabling active involvement in the management of the company exceeding €2 million, made in a sensitive sector as outlined in the Supreme Council of National Defense ("**CSAT**") Decision no 73/2012 and in accordance with the criteria set forth in Article 4 of Regulation 2019/452, is subject to the FDI review conducted by the Commission for examining foreign direct investments ("**CEISD**"). Under certain circumstances, the €2 million threshold may be lower, such as for investments in critical national infrastructures.

It's important to note that even minority acquisitions may trigger FDI screening - for example, a 10% stake acquisition has been considered within FDI regulations (Decision 198/2024). Furthermore, Romania's FDI regime encompasses the concept of "new investment," expanding oversight to initial investments, capacity expansions or diversifications of production.

In essence, any investment, normally over €2 million, could fall under FDI regulations, particularly considering CEISD's broad interpretation of FDI scope, including of the sensitive sectors concerned.

In 2024, public information reveals a notably active CEISD, which has issued 257 decisions for investments which did not raise security issues. In fact, from the public information available, only one transaction has been conditionally approved (through Government decision no. 35/12.02.2024).

The level of activity of CEISD is even greater, as for EU investments it is the Competition Council who sends approval letters to the concerned investor, and as in some cases CEISD issued non-intervention letters, both of which are not published.

Despite the numerous confidential sections in CEISD's decisions, likely for security reasons, making it challenging to discern the rationale behind its analysis of whether an investment falls under the FDI regime, it has become clearer over time how the FDI framework operates.

Additionally, the FDI framework is being continuously clarified. Recently, the draft guidelines for GEO 46/2022 was published, providing valuable insights into how the investment value should be calculated.

Further on, we provide below insights into CEISD's practices concerning specific types of investments.

- **Intra-group transactions (mergers/divisions)** – As GEO 46/2022 does not exclude intra-group transactions, CEISD has approached these operations from two perspectives:

- Non-EU intra-group transactions fall within the scope of FDI (e.g., Decision 5/2025, Decision 82/2024, Decision 5/2024, Decision 102/2024). Please be aware that the fact that there is no change in the ultimate beneficiary and the operation targets only the intermediate ownership chain is irrelevant. Moreover, even in cases where the change of control does not affect the entity in Romania, as it occurs upstream in the ownership chain, the investment has been considered to fall within the scope of FDI regulations.
- As for EU intra-group transactions, until now, CEISD has regarded them as outside the application of FDI regulations.
- **Real estate transactions** – Given that GEO 46/2022 does not include specific provisions regarding real estate transactions, being analysed under FDI general screening criteria, CEISD seems to have crystallized in its practice two different approaches:

outside the scope of FDI regulations.

- At the same time, CEISD has considered that share deals (the indirect acquisition of real estate through the purchase of a company managing the property either by renting or developing logistic parks) fall under FDI scope (e.g., Decision 31/13.02.2025; Decision 4/14.01.2025; Decision 97/30.05.2024).

  Such investments were included in the sensitive domain of "*the security of citizens and communities*", without making available the reasoning for this or any other criteria taken into consideration - e.g., criteria regarding the proximity of the real estate to an essential infrastructure etc.

- **New investments made with internal funds** – CEISD maintains a strict approach, considering that investments such as capacity expansion or product diversification, even when financed through the investor's own resources, rather than external capital, still fall within the scope of FDI regulations (e.g., Decision 23/2025, Decision 107/2024). Additionally, please note that, under certain conditions, for recurring investments, CEISD allows a 1-year notification covering multiple such investments.

  In light of the above, investors must stay alert, carefully assessing each investment on a case-by-case basis to determine whether FDI notification is required. The stakes are high, as failing to secure the CEISD's approval before implementation of the investment can result in substantial penalties (up to 10% of annual turnover) and contracts through which such an investment is made are deemed null and void.