

CERHA HEMPEL CEE NEWSLETTER *Romania*

Romania – Further amendments to Romanian legislation on foreign direct investments

On 15 May 2023, the Parliament adopted Law No. 164/2023 approving Government Emergency Ordinance No. 46/2022 on measures implementing Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union and amending and supplementing Competition Law No. 21/1996. Law No. 164/2023 (Law 164/2023) entered into force on 10 June 2023. Here are the key amendments introduced by the new regulation:

EU investor concept

Law No. 164/2023 introduces the concept of the EU investor, which is defined as including the following categories of persons:

- Natural persons who are citizens of a Member State of the European Union and who have made or intend to make an investment in Romania;
- Legal entities whose registered office is located in a Member State of the European Union that have made or intend to make an investment in Romania;
- Legal entities whose registered office is located in a Member State of the European Union that have made or intend to make an investment in Romania and over which control is exercised directly or indirectly by: (i) a natural person who is a citizen of a Member State, (ii) a legal entity whose registered office is located in a Member State, or (iii) another legal

entity, without legal personality, organized under the laws of a Member State;

- The trustee of an entity without legal personality that has made or intends to make an investment in Romania or a person in a similar position if the person in question is a citizen of a Member State of the European Union, in the case of a natural person, or if it has its registered office located in a Member State, in the case of a legal person, or if this entity has been incorporated under the laws of a Member State.

Broader scope

According to the new amendments, investments notified as economic concentrations in accordance with Competition Law No. 21/1996, which meet the conditions regarding the scope of activity set out in the Decision of the Supreme Council of National Defence No. 73/2012 and the threshold of EUR 2,000,000, will be subject to examination and authorisation by the Commission for the Examination of Foreign Direct Investments (the **FDI Commission**), regardless of whether they are made by foreign investors or investors from the European Union.

In light of the above definitions, Law No. 164/2023 extends the scope of the FDI filing obligation so it also covers transactions by EU investors.

Possibility to annul the investment

The FDI Commission may issue an advisory opinion with a proposal to annul the direct investment if it finds that a foreign direct investment has been implemented in breach of the FDI legislation and affects the security of and public order in Romania or if it is likely to affect



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projects or programmes of interest to the European Union. The FDI Commission will transmit the annulment proposal to the Government of Romania, which may subsequently order the annulment of the investment by government decision. The FDI Commission will also transmit the conditions, criteria, deadlines and procedure for the annulment of the foreign direct investment, which will be further established by government decision.

Law No. 164/2023 also introduces new attributions for the Competition Council, which will

have the power to adopt guidelines regarding the method of determining the value of direct investments.

For more information

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