

## FDI in Romania: New Screening Rules for EU investors

19 July 2024

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Following the latest developments in Romania's Foreign Direct Investment (FDI) screening regime in December 2023, which encompasses EU investors within the screening scope, the Romanian Parliament has recently introduced a new law that revises and reinforces the approach towards EU investors by harmonising the sanctioning regime for "*gun-jumping*" between non-EU and EU investors. This move aims to create a uniform framework for all investors, regardless of nationality.

One of the key aspects of the new reform is *inter alia* the extension of the sanctioning regime previously applicable for non-EU investors to EU investors as well, meaning that "*gun jumping*" - unauthorised implementation of investments - will now be treated equally regardless of an investor's nationality, with penalties of up to 10% of worldwide turnover applicable to the investor in breach.

The new law was promulgated by the President of Romania and will take effect three days after its publication in the Official Gazette, which occurred on 18 July, 2024.

**Beyond the expansion of the FDI sanctioning regime to EU investors as well, other notable amendments are the following:**

- **New sanctions are applicable for providing incorrect, incomplete or misleading information, or for failing to fully and correctly provide all necessary information to the FDI Screening Commission.**
  - A fine of up to 10% of the investor's worldwide turnover subject to screening might apply for intentionally or negligently providing incorrect, incomplete or misleading information in an application for the authorisation of foreign direct investment, new investment or investment from the European Union.
  - The same fine, amounting to 10% of the investor's worldwide turnover, applies for failing to provide the necessary information for a foreign investment examination and approval within legal deadlines and in a complete and correct manner, as required. Although the legislator explicitly mentioned only foreign direct investments in this provision, it is our interpretation that these rules are applicable to all types of investments, regardless of the nationality of the investor, consistent with the overall theme of the article.
- **New clarifications are issued regarding the investments affecting national security or public order or which are likely to affect projects or programmes of interest to the EU.**
  - In cases where investments affecting national security or public order or which are likely to affect projects or programmes of interest to the EU, which have been implemented without prior clearance, the FDI Screening Commission will issue an opinion that not only assesses the investment's compliance with the applicable legal framework but also recommends any necessary measures to be taken by the Government to address the concerns, such as structural or behavioural remedies that would help restore the pre-investment situation.
- **Nullity might affect the arrangements implementing investments which were not screened and authorised according to the law.**
  - It has been clarified that any commitments, agreements or contractual clauses related to all types of investments are null and void if such investments have not been previously screened and authorised in accordance with the applicable law.

- **New guidelines supplementing the screening procedure are expected to be issued by the Romanian Competition Council.**
  - The Romanian Competition Council has been endowed with enhanced powers to develop and fine-tune the investment screening process under the new law. Unlike its previous mandate, which focused solely on establishing criteria for assessing investment value, the revised legislation empowers the authority to issue rules governing the conditions, timeline and procedures for scrutinising investments, after consulting the FDI Screening Commission and in accordance with the opinion of the Legislative Council.

Another very important development of the new law addresses concerns over the protection of **client-attorney privilege during inspections**, as provided under the Romanian Competition Law. As of December 2023, the inspectors of the Romanian Competition Council have the power to access and copy client-attorney correspondence if they dispute the claimed privilege. In response, the new law introduces important safeguards to protect client-attorney privilege, respectively the inspected undertakings are no longer required to disclose the content of correspondence that they claim is privileged. If inspectors are unable to determine whether correspondence is privileged, they will seal the documents and submit them to the Romanian Competition Council to finally decide upon the nature of the correspondence.

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