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**Emergency Ordinance no. 46/ 2022, adopted by the Government on April 14, 2022, provides the measures to implement the European Regulation for the examination of foreign direct investment in the European Union, as well as for amending and supplementing the Competition Law no. 21/1996.**

The Emergency Ordinance no. 46/ 2022 contains the appropriate administrative mechanisms and instruments for the efficient implementation of the Regulation, being applicable to foreign direct investments and new investments, as defined and regulated by this emergency ordinance.

The Government of Romania adopts GEO no. 46 of 14 April 2022 regarding the measures for the implementation of Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the examination of foreign direct investment in the Union (“FDI Regulation”), and for the amendment and completion of the Competition Law no. 21/1996

At national level, the regulatory framework, administrative mechanisms and instruments for efficient implementation of the FDI Regulation are implemented by GEO no. 46 of 14.04.2022 (“GEO regarding FDI” or “GEO no. 46/2022”), published in the Official Gazette no. 379 of April 18, 2022.

### 1. The scope of the GEO regarding FDI

The **GEO no. 46/2022** applies to foreign direct investments and new investments, as defined and regulated by this emergency ordinance. Therefore, the **foreign investors** who intend to make a foreign direct investment or a new foreign investment in Romania are required to submit applications for authorization of the foreign direct investment and to refrain from implementation prior to authorization.

According to the new regulations, the following persons are considered to be foreign investors, who have made or intend to make a direct foreign investment in Romania:

- i. natural person / legal person who is not a national of an EU Member State / whose registered office is not located in an EU Member State,
- ii. legal person, whose registered office is in an EU Member State, in which direct or indirect control is exercised by: (a) a natural person who is not a national of an EU Member State, (b) a person whose registered office is not located in an EU Member State, or (c) another legal entity, without legal personality, organized under the laws of a non-EU Member State;
- iii. trustee of an entity without legal personality or a person in a similar position, if he is not a citizen of the European Union, in the case of a natural person, or if he is not headquartered in a Member State of the European Union, in the case of a legal person, or if that entity was established under the laws of a State which is not a Member State of the European Union.

The GEO regarding FDI expands the scope of the definition of the investments to be notified, according to the FDI Regulation, the foreign direct investment being considered:

- i. investment of any kind by a foreign investor for the purpose of establishing or maintaining lasting and direct links between the foreign investor and the undertaking concerned or a separate organizational unit of an enterprise, to which such funds are made available or to be made available to them for the scope of carrying out an economic activity in Romania, and which allow the foreign investor to exercise control over the administration of the undertaking.
- ii. when there is a change in the ownership structure of a foreign investor legal entity, if this change in the legal entity makes it possible to exercise control, directly or indirectly, by a natural person / legal entity / legal entity, without legal personality, that is not citizen of an EU Member State / its registered office is not in a Member State of the European Union / is organized under the laws of a state that is not a member of the European Union.

### 2. To which foreign direct investments the GEO regarding FDI applies?

The foreign direct investment that cumulatively meets the following conditions is subject to examination and authorization:

- a. have as object of investment the domains provided in art. 2 of the CSAT Decision no. 73/2012 regarding the security of the citizen and the communities; border security; energy security; transport security; security of vital supply systems; critical infrastructure security; security of information and communication systems; security of financial, fiscal, banking and insurance activity; security of production and circulation of weapons, ammunition, explosives, toxic substances; industrial security; disaster protection; protection of agriculture and the environment; protection of privatization operations of state-owned enterprises or their management.

- b. and whose value exceed the **threshold of 2,000,000 euros**, calculated at the exchange rate communicated by the National Bank of Romania valid for the last day of the financial year preceding the operation.

By exception from the above provisions, the foreign direct investments not exceeding the threshold of 2,000,000 euros may be subject to the examination and authorization of CEISD if, by their nature, they can have a significant impact on public security or public policy or pose significant risks to them.

### 3. Competent authority and FDI examination procedure

The competent authority for the examination of foreign direct investment is the Commission for the Examination of Foreign Direct Investment (hereinafter referred to as "CEISD"), the Secretariat of the Commission being provided by a specialized structure within the Competition Council.

The organization and functioning of the CEISD will be established by Government decision within 60 days from the date of entry into force of this emergency ordinance, at the proposal of the Competition Council and the Ministry of Economy, and the Regulation on the organization and functioning of the CEISD Secretariat will be approved by order of the President of the Competition Council.

If a foreign direct investment is at the same time a notifiable economic concentration, the foreign investor will submit both an application for authorization under the conditions of this GEO no. 46/2022 and a notification of the economic concentration, according to the procedure provided by Law no. 21/1996. The Competition Council will complete the process of analyzing and/or authorizing the economic concentration based on the decision regarding the authorization of foreign direct investment, the deadlines being suspended until a final decision.

Following the analysis, CEISD will issue an opinion on the applications for authorization, deciding, as appropriate:

- a. authorization of foreign direct investment; will be sent to the Competition Council for the issuance of an Authorization Decision;
- b. conditional authorization of foreign direct investment; will be sent to the Government for the issuance of a Decision on conditional authorization;
- c. rejection of the application for authorization of foreign direct investment; will be sent to the Government for the issuance of a Decision on the rejection of the application for authorization.

### 4. It is forbidden to make a foreign direct investment before it is authorized by the CEISD

Violation of the obligation to notify the implementation of a foreign direct investment or the provision of inaccurate, incomplete or misleading information, as well as the non-compliant enforcement of commitments or breach of the said commitments, constitutes a contravention and is sanctioned by the Competition Council with a fine of **up to 10 % of total global turnover** achieved in the financial year preceding the sanction.

The contraventions are ascertained and sanctioned by the Competition Council by decision, which can be appealed to the Bucharest Court of Appeal within 30 days from the communication.

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