



In this issue:

The prohibition of a company from the European Union from acquiring a stake in a resident "strategic" company, for reasons of security and public order, constitutes a serious restriction on the freedom of establishment of that company within the Union

The European Court of Justice has considered that national legislation allowing the authorities of a member state to prohibit a company from the European Union from acquiring a stake in a resident "strategic" company, for reasons of security and public order, constitutes a serious restriction on the freedom of establishment of that company within the Union. This freedom is a fundamental right guaranteed by the Treaty on the Functioning of the European Union (TFEU).

Law no. 241/2023 supplementing the Law no. 53/2003 - Labour Code

The new law introduces within the Romanian Labour Code express provisions regarding a benefit that may be accessed, under certain circumstances, by employees with dependent children up to the age of 11 years old. In principle, this category of employees will be able to request 4 days / month of work from home or, as case may be, work under teleworking regime, subject to meeting certain conditions laid down by the law. Certain exceptions apply accordingly.

I. **In the Judgment of the European Court of Justice dated July 13, 2023, in case C-106/22, in the dispute between**

- Xella Magyarország Építőanyagipari Kft., a Hungarian company controlled ultimately by an Irish national, and the Minister of Innovation and Technologies of Hungary, regarding a decision by the latter to prohibit Xella Magyarország from acquiring all the shares of a company based in Hungary that operates in the Hungarian construction materials market due to being considered to operate in a strategic field,

a preliminary question was addressed to the European Court of Justice to determine to what extent:

- ✓ The legislation of a member state that establishes a mechanism for examining foreign investments in relation to resident companies (in which an enterprise from a third country has decisive influence) considered as operating in strategic fields is in line with the TFEU and European Regulation 2019/452.

The response of the European Court of Justice to the preliminary question is as follows:

1. **Generally**, the analysis of transactions made by enterprises registered in a member state for reasons of security or public order does not fall within the scope of Regulation 2019/452, which is limited to investments within the Union made by enterprises constituted or organized in accordance with the legislation of a third country.
2. To determine a company's connection to the legal order of a member state, the location of its registered office, central administration, or principal place of business is considered and not the origin of its shareholders.
3. **As an exception**, the exercise of ultimate control is only analyzed in the case of investments originating from within the European Union where, through artificial arrangements that do not reflect economic reality, it is intended to circumvent the mechanisms and decisions provided for in Regulation 2019/452.
4. Insofar as national legislation allows the authorities of a member state to prohibit a company from the European Union, for reasons of security and public order, from acquiring stakes in a resident "strategic" company, this constitutes a manifestly serious restriction on the freedom of establishment of that company within the Union.
5. According to the consistent case law of the Court, a restriction on a fundamental freedom guaranteed by the TFEU can only be justified if the national measure in question responds to an imperative reason of general interest, is suitable for achieving the intended objective, and does not go beyond what is necessary to attain that objective. Thus, public order and public security can only be invoked in the case of a real and sufficiently serious threat affecting a fundamental interest of society. Additionally, these reasons cannot be diverted from their proper function to serve purely economic purposes.

Implications regarding the examination of investments made in Romania by investors from the European Union:

1. Similar to Hungarian legislation, Romanian legislation (Government Emergency Ordinance no. 46/2022) provides for the obligation to examine and authorize investments made in Romania by resident enterprises in the European Union concerning the control exercised by associates/shareholders.
2. Furthermore, after the amendments brought by Law no. 164/2023 to Government Emergency Ordinance no. 46/2022, as of June 10, the Romanian State examines and authorizes, under certain conditions, investments planned by resident enterprises in the European Union.
3. Consequently, potential decisions by the Romanian State to prohibit a company from the European Union, for reasons of security and public order, from acquiring stakes in a resident "strategic" company will need to seriously justify the real and sufficiently serious threats affecting a fundamental right provided for in the TFEU, namely the freedom of establishment within the Union.

II. [Law no. 241/2023 supplementing the Law no. 53/2003 - Labour Code](#)

Law no. 241/2023 was published in the Official Gazette no. 673/21.07.2023, entering into force on July 24, 2023.

As per the provisions introduced by the new law, the employees who are parents / legal representatives of dependent children up to the age of 11 years old will be entitled to request towards their employer to work for **4 days / month**, as case may be:

- Either under **work from home regime**;
- Or under **teleworking regime** (under the conditions of Law no. 81/2018 regulating the teleworking activity).

Situations where the **nature or type of work do not allow** for work to be performed from home or under teleworking regime are excluded from the scope of the present benefit.

The new legal provisions also contain some **conditions applicable in particular situations**:

- if both parents or legal representatives are employees eligible to access the benefit, the request for the benefit will have to be **accompanied by an affidavit** of the other parent / legal representative stating that he or she has not requested home-working or teleworking concurrently, for the same period;
- if the parent / legal representative is a single person, as per Article 3 of Law No 277/2010 on family support allowance (e.g., unmarried, widowed, divorced etc.), **no affidavit** is necessary from the other parent / legal representative.

Last but not least, by way of derogation from the provisions of the Law no. 81/2018 regulating teleworking activity, employees who access the 4 days / month benefit in the form of telework employees **are required to have available all necessary means to perform the duties assigned to them according to the job description**.

[For further questions regarding the aspects mentioned in this alert, please contact us.](#)



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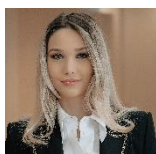
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