



FDI Screening Regulation in Romania – Implementation by EGO 46/2022

By Dumitru Rusu, Partner Voicu & Filipescu

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Legal Changes of April 2022

Voicu & Filipescu is a full service law firm, covering all legal areas relevant to your company's activity. This issue of our monthly newsletter provides you with a brief description of some of the recent legal amendments in:

- Data Protection
- Dispute resolution
- Employment
- Public Procurement



[Chambers and Partners Europe, 2021 edition](#) recommends Voicu & Filipescu for our lawyer's activity in the field of dispute resolution.

[Legal500 EMEA 2021 edition](#) recommends Voicu & Filipescu for our lawyers' activity in 6 practice areas: Corporate and , Commercial, Employment, PPP and Procurement, Real Estate and Construction, Restructuring and Insolvency and TMT.

[IFLR 1000, 2021 edition](#) recommends Voicu & Filipescu for our lawyer's activity in three practice areas: M&A, Banking and Finance and Project Development. Also, Mr. Dumitru Rusu – Partner, head of the Banking and Finance practice, was selected as a *Highly Regarded Lawyer* for the practice areas of Capital Markets and Banking.



FDI Screening Regulation in Romania – Implementation by EGO 46/2022

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Except for a brief press explanation of the director of the Romanian Intelligence Service (SRI) in respect that the role granted by the Government to SRI in the business areas according to the EGO no. 46/2022¹ is part of the implementation of European regulations, this ordinance, entering into force on 18 April 2022, was discrete and without impact on either media or on general public awareness, similar with the direct entering into force of (EU) Regulation no. 2019/452 – FDI Screening Regulation.

We have presented the regulation and the draft of the emergency ordinance for implementation in another legal newsletter: <https://www.vf.ro/newsletter-october-2020/>.

As a matter of principle, our previous considerations remain valid (with some additions and supplementations described below), this screening mechanism referring to foreign direct investments competing and overlapping with the pre-existing general screening investment mechanism exercised by the Romanian Competition Council and the Supreme National Defence Council (CSAT) according to CSAT Resolution no. 73/2012).

Notable aspects brought by EGO 46/2022:

- This screening mechanism is exercised by CEISD – Commission for Examination of Foreign Direct Investments (*Comisia pentru examinarea investițiilor străine directe*), as an inter-ministerial body without legal personality, working in the Government and established by decision of the Prime-Minister (nomination is expected in 30 days from OUG 46/2022).
- CEISD is a deliberative and pre-screening body, of which role is to review all foreign direct investment plans and approves / approves conditionally / rejects or rejects those foreign direct investment that present potential threats for security or public order. CEISD is entitled to take decision and issue mandatory pre-conditional advice to the Competition Council, as the issuer of the formal legal decisions.
- CEISD shall include representatives of the prime minister's office, Ministry of Economy, Energy and Business Environment, Ministry of Finance, Ministry of Foreign Affairs, Ministry of National Defence, Ministry of Justice, Ministry of Internal Affairs and Competition Council. Representatives of the Romanian Intelligence Service (SRI) and Foreign Intelligence Service (SIE) are permanent attendees. The Competition Council assures the secretarial duties of CEISD and it is also the administrative body issuing the formal legal decisions under EGO 46/2022 (given the lack of legal personality of CEISD).
- In brought lines the areas under current general investment scrutiny in Romania overlaps with the areas from the Regulation, given also their quite generality – national security vs. security or public order. However, it worth to mention that the FDI Screening Regulation and EGO 46/2022 and local law for implementation brings on the table some new aspects for the scrutiny, such as the freedom and pluralism of the media or access to sensitive information, as well as specific definitions of critical technologies.

¹ Emergency Government Ordinance (EGO) no. 46/2022 regarding measures for application of (EU) Regulation no. 2019/452 of the European Parliament and the Council from 19 March 2019 for the establishment of a framework for the examination of the foreign direct investments in the EU, as well as for the modification and the amendment of the Competition Law no. 21/1996



- There is also a minimum materiality threshold of EUR 2 million for the scrutiny by CEISD, but which can be overpassed discretionary (the CSAT review does not include such minimum materiality threshold).
- We have a broader definition of new investment brought by EGO 46/2022, this referring not only to new “classical” investments, i.e. acquisition of business and assets, but also to extension of existing premises, launching of new products and business lines, diversification of activity. It would be difficult to assess how is this implemented in the financial sector, hopefully clarifications to be brought by the application norms.
- There is an obligatory pre-approval with significant sanctions as value for the breaches, i.e. it can be sanctioned (by the Competition Council) with a fine of up to 10% of total global turnover achieved in the financial year preceding the sanction. Fines between RON 10 to 50 million can be applied in absence of turnover for previous year.
- There is a possibility of ex-post review and intervention – this is still unclear but it appears CEISD has such role in a later intervention (ex-post control), with potential protective measures such as suspension of the ownership rights and further forced sale of the participations in public tenders which can be applied. Hopefully clarifications to be brought by the application norms.
- OUG 46/2022 formally excludes the portfolio investment of non-EU investors from its application but the definition is very narrow, being based on two cumulative conditions: (a) the investment is made through a regulated market (stock exchange); (b) the investment does not allow the participation to the direct administration of the target.
- The second condition is very sensitive while it makes reference to the ability to be involved in the direct administration of the target, not to the actual involvement (i.e. if the investor has the right / power to nominate / determine the appointment of its representatives in the management or supervisory bodies of the target and not actual nomination / appointment).
- Application norms are expected to be issued by the Competition Council in 60 days from entering into force of the ordinance – 18 June 2022.



data protection - legislative changes published in April 2022

I. ROMANIA

1 SANCTIONS APPLIED BY THE NATIONAL SUPERVISORY AUTHORITY (ANSPDCP)

1.1 IKEA ROMANIA S.R.L was sanctioned for violating the provisions of Article 12 para. (3) of the GDPR with a fine amounting to LEI 4,949.00 (the equivalent of EUR 1,000)

Following the investigation, the National Supervisory Authority found that the controller failed to submit in due course a response to the repeated requests from the data subject, by which he/she exercised the right to delete his/her personal data from an Ikea user account, created based on an email address.

As a corrective measure, the controller was required to take the necessary measures to ensure that the rights of data subjects are observed in all cases.

1.2 An Association of Owners was sanctioned for violating the provisions of Article 83 para. (5) point e) in conjunction with Article 58 para. (1) point a) and e) of the GDPR with a fine amounting to LEI 2,747.50 (the equivalent of EUR 500)

Following the investigation, it was found that the controller (The Association of Owners from 17 Soporului Street, Cluj-Napoca) failed to respond to the request for information from the National Supervisory Authority, although it had previously confirmed its receipt.

In addition, the controller was requested to provide all the information requested within 5 working days from the notification of the penalty notice.

The investigation was initiated following a complaint by the data subject that the controller had disclosed, on the Facebook group of the building where the data subject lives, images of himself/ herself from the surveillance system managed by the association.

1.3 Cluj Court of Appeal confirmed the fine in the amount of LEI 487,380.00 (the equivalent of EUR 100,000) applied by the National Supervisory Authority to Banca Transilvania S.A., for violating the provisions of Article 32 para. (1) and (2) in conjunction with Art. 5 para. (1) lit. f) of the GDPR

Following the investigation performed and finalised on 26.11.2020, the National Supervisory Authority found that the controller failed to take sufficient measures to ensure that individuals acting under its authority and having access to personal data, only process them at the controller's request.

In particular, 3 employees of Banca Transilvania S.A. disclosed, on the Facebook social media platform, a statement requested by the controller from one of its clients on how he intended to use an amount of money that he wanted to withdraw from his personal account. This led to the disclosure and unauthorized access to the data subject's personal data, such as name and surname, e-mail addresses, personal preferences, the value of financial transactions, liable to cause moral damage, as well as other economic or social disadvantages to the data subject.

Subsequently, the controller challenged the fine in court, and the Cluj Court of Appeal has finally confirmed the decision delivered by the first level court in this case, in relation to the lawfulness and grounds of the related fine notice and the „effective, proportionate and dissuasive” nature of the fine imposed.



In delivering its judgment, the Court of Appeal considered that the controller failed to prove the effective training of the three employees causing the security incident and the implementation of control and evaluation mechanisms developed to ensure that its employees have mastered its internal data protection policies.

The Court also held that the excerpts from various internal procedures submitted by the controller in order to prove the implementation of appropriate technical and organisation measures were not able to prove that an adequate level of security was ensured.

II. RELEVANT ISSUES AT THE EUROPEAN DATA PROTECTION BOARD (EDPB) LEVEL

2.1 EDPB adopts Statement 01/2022 on the announcement of an agreement in principle on a new Trans-Atlantic Data Privacy Framework

The EDPB notes that this announcement does not constitute a legal framework on the basis of which EEA data exporters can transfer data to the U.S.

Data exporters shall continue taking the necessary actions to comply with the case law of the Court of Justice of the European Union, in particular with Schrems II decision of July 16, 2020.

The EDPB will pay special attention to how this political agreement is translated into concrete legal proposals.

2.2 EDPB amends the Rules of Procedure on notification and translation of binding decisions in compliance with Article 65 of the GDPR

During its Plenary held on April 6, 2022, the EDPB adopts version VIII of Rules of Procedure on the notification and translation of binding decisions. The amendments relate to the powers and procedure to be followed in dispute resolutions assessed by the EDPB, in compliance with Article 65 GDPR.

More details can be found at the following link: [edpb_rules_of_procedure_version_8_adopted_20220406_en.pdf \(europa.eu\)](https://edpb.europa.eu/edpb/files/2022/04/20220406_en.pdf).

III. EUROPEAN UNION

1 SANCTIONS APPLIED IN THE EU

1.1 The Danish Data Protection Authority ("Datatilsynet") imposed to Danske Bank a fine of EUR 1,3 million for breaches of the GDPR provisions

Following the investigation, Datatilsynet found that the controller failed to implement adequate procedures for the storage and deletion of personal data in more than 400 banking systems, where data belonging to millions of individuals were being managed.

Hence, Datatilsynet has sanctioned the controller for violating the provisions of art. 5 para. (2) of the GDPR, which provides for its obligation to comply with the general principles of personal data processing.

The investigation was initiated in November 2020, following the controller's statement pointing out that it had found problems with the deletion of personal data whose storage was no the longer necessary or justified for the business purposes pursued.



1.2 The Irish Data Protection Authority ("DPC") imposed to Bank of Ireland a fine of EUR 463,000 for breaches of the GDPR provisions.

Following the investigation, the DPC found that due to flawed personal data processing processes, there has been a breach of security of personal data of more than 47,000 data subjects, in violation of Article 32 of the GDPR.

In particular, the Bank of Ireland submitted incorrect information to the Central Credit Register, an entity under the authority of the Central Bank, and unauthorisedly disclosed personal data belonging to its clients, errors which were likely to alter their credit performance score. In addition, the controller unjustifiably delayed in fulfilling its obligation to inform data subjects on the incidents occurred.

The investigation was initiated following 19 notifications received from the controller with respect to personal data security breaches.

In addition to the fine, the controller was required to implement appropriate technical and organizational measures to ensure a level of security that is proportionate to the business risks.

1.3 The Dutch Data Protection Authority ("AP") imposed to Tax and Customs Administration a fine of EUR 3,7 million for breaches of the GDPR provisions

Following the investigation, the AP found that the controller violated several provisions of the GDPR, including processing personal data without a legal basis, storing outdated or inaccurate personal data and retaining it for unreasonably long time-periods.

In particular, the irregularities extended over a period of 6 years and were detected through the use of the Fraud Reporting System, a database of personal data of over 250,000 data subjects, including minors. A number of them suffered financial consequences as a result of the wrong information being attributed to them.

In determining the amount of the fine, the AP considered the severity of the offences, their duration and the damage caused to the data subjects.



dispute resolution - legal changes published in April 2022

Decision of the High Court of Cassation and Justice no. 4/2022 regarding the examination of the request formulated by Bucharest Court of Appeals - Criminal Section II regarding the request that forms the object of Case File no. 2.813/1/2021 in order to issue a preliminary ruling for resolving a matter of law was published in the Official Gazette, Part I no. 335 of April 5, 2022 and is applicable from the same date.

The High Court admitted the request made by Bucharest Court of Appeals - Criminal Section II in order to issue a preliminary ruling for resolving a matter of law and, consequently, established that in the situation in which the theft is committed by a person who wears a mask, in a space where wearing a mask it is mandatory, there shall be applicable the provisions of the aggravated theft laid down in art. 228 para. (1) – art. 229 para. (1) letter c) of Criminal Code.

Therefore, the Court stated that the fulfilment of the obligation to wear a protective mask, which may hide the characteristics of the face, in public spaces where the normative acts in force stipulate the requirement of wearing the mask, attracts the aggravating circumstance laid down in art. 229 para. (1) letter c) of Criminal Code.

Decision of the High Court of Cassation and Justice no. 6/2022 regarding the issuance of an appeal in the interest of the law regarding the request that forms the object of Case File no. 3.123/1/2021, formulated by the Ombudsman was published in the Official Gazette, Part I no. 337 of April 6, 2022 and it is applicable from the same date.

The High Court admitted the request made by the Ombudsman in order to issue an appeal in the interest of the law and, consequently, established that in the unitary interpretation and application of the provisions of (i) art. 39 para. (1) of Law no. 188/2000 on bailiffs, republished, as subsequently amended and supplemented, of (ii) Order of the Minister of Justice no. 2.550/C/2006 for the approval of the minimal and maximal fees for the services provided by bailiffs, as amended and (iii) of the provisions of art. 670 para. (2) of Code of Civil Procedure, the bailiff's maximum fees, as provided by art. 39 para. (1) of Law no. 188/2000 on bailiffs and by Order of the Minister of Justice no. 2.550/C/2006, shall not include the value added tax provided by art. 265 of Fiscal Code in relation to the services provided by bailiffs during enforcement proceedings.

Decision of the High Court of Cassation and Justice no. 3/2022 regarding the examination of the request formulated by Cluj Court of Appeals - Criminal Section regarding the request that forms the object of Case File no. 2.763/1/2021 in order to issue a preliminary ruling for resolving a matter of law was published in the Official Gazette, Part I no. 375 of April 15, 2022 and is applicable from the same date.

The High Court admitted the request made by Cluj Court of Appeals - Criminal Section in order to issue a preliminary ruling for resolving a matter of law and, consequently, established that in the interpretation and application of the provisions of art. 3 of Law no. 143/2000 concerning the fight against illicit drug trafficking and use, in the situation in which a person travels in Romania by plane, having drugs in its possession, the drugs shall be considered introduced into the country (with the consequence of consuming the offense) in the moment in which the person on board of the aircraft crosses the border, therefore, entering the airspace between the state borders, without the customs control being relevant in relation with the consumption of the offense.



employment - legal changes published in April 2022

Government Decision no. 474/2022 for amending and supplementing the Methodological Norms for the application of the provisions of Government Ordinance no. 129/2000 on the professional training of adults, approved by Government Decision no. 522/2003, was published in the Official Gazette of Romania, Part I, no. 363 of April 12, 2022, in force from the same date.

Starting with the entry into force of the Decision no. 474/2022, the following main amendments were adopted:

- I. it is clarified by being defined the notion of "other forms of professional training", mentioned in Art. 10 para. (3) letter d) of the Government Ordinance no. 129/200, as follows:
 - training or practical experience acquired on the job;
 - exchange of experience;
 - workshops;
 - self-tuition, including distance learning;
 - computer-assisted learning;
 - participation in conferences, lectures, seminars.
- II. it is regulated also the possibility of conducting online the professional training programmes.

Law no. 111/2022 on the regulation of the activity of the domestic provider was published in the Official Gazette of Romania, Part I, no. 402 of April 27, 2022, in force starting with January 1, 2024.

The Law will enter into force on January 1, 2024, except for Art. 13 para. (1) and Art. 17, that entered into force on April 30, 2022. The two articles provide that (i) the Ministry of Labour shall create an Electronic Platform for the registration of domestic activities and (ii) within 60 days from the date the Law was published in the Official Gazette, the Ministry of Labour shall draft the methodological norms for its implementation.

The Law regulates the following:

- the domestic activity shall be performed at the domestic beneficiary's household, at the domestic provider's domicile or at another place necessary for the performance of the domestic activity, agreed by the parties;
- the domestic provider shall not be a member of the family of the domestic beneficiary and the minimum age for being a domestic provider shall be at least 16 years;
- the legal relationship between the domestic provider and the domestic beneficiary is concluded by an agreement between the parties, without a written form being required;
- the domestic beneficiary and the domestic provider agree on the activities and the number of hours or the amount of work; the domestic provider shall be paid in compliance with the provisions of this Law with domestic activity vouchers;



- the daily duration of domestic work for a domestic beneficiary shall not exceed 12 hours, or 6 hours for domestic providers aged 16 to 18;
- at the end of the provision of services agreed upon, based on the number of hours performed and of the negotiation between the parties, the domestic beneficiary shall hand over to the domestic provider the number of activity vouchers corresponding to the value of the service provided.



public procurement - legal changes published in April 2022

Government Emergency Ordinance no. 54/2022 supplementing Law no. 99/2016 on sectoral procurement was published in the Official Gazette, Part I no. 393 of April 21, 2022, in force from the same date.

Following the entry into force of G.E.O no. 54/2022, Law no. 99/2016 is amended, by the introduction of **article 117¹** allowing contracting entities to apply the negotiation procedure without prior invitation also to the competitive tendering procedure for the award of sectoral contracts concerning the execution of the remaining work to be performed for the construction and development of electricity generation capacities, only if it represents less than 40% of the physical stage of the investment objective.

In addition, **article 180** is supplemented by the insertion of **para. (6¹)**, allowing contracting entities in the case referred to **article 117¹**, not to exclude from the award procedure economic operators who have seriously or repeatedly breached their main obligations under a public procurement contract, a sectoral contract or a concession contract previously concluded.

Emergency Government Ordinance no. 47/2022 on the adjustment of the prices of public procurement contracts/sectoral contracts/concession contracts/framework agreements was published in the Official Gazette, Part I no. 377 of April 15, 2022, in force from the same date.

G.E.O no. 47/2022 was adopted in addition to G.E.O no. 15/2021, thus extending the scope of public procurement contracts/sectoral/concession/framework agreements under which price adjustment may be applied.

Thus, the provisions of G.E.O no. 47/2022 referring to price adjustment shall apply to:

- Contracts/framework agreements of works in progress at the date of entry into force of G.E.O 47/2022.
- Contracts/framework agreements for products in progress on the date of entry into force of G.E.O 47/2022, with a **firm price** and having as object:
 - endowments/technological and functional equipment/machines required for commissioning and/or equipping and specific fitting of the objectives/investment projects/maintenance and current repair works/capital repairs, complying with the intended function, or strictly necessary for the execution of works in connection with one of the activities provided for in **Annex no. 1** to Law no. 98/2016, Law no. 99/2016 and Law no. 100/2016;
 - the purchase of technological and functional equipment and/or machinery identified above as well as the purchase of products for performing maintenance/repair/administration/operation work on roads of national, county or local interest, while the purchase is performed by awarding a separate contract.
- Contracts/framework agreements of services in progress at the date of entry into force of G.E.O no. 47/2022, having as their object feasibility studies and/or technical projects, which contain revision clauses or in which a firm price is provided.
- Contracts/framework agreements for works/products/services for transport infrastructure design of national interest in progress, irrespective of the period of performance/supply/provision and which:



- have provided for price revision clauses, but for which application is foreseen after a certain period has passed from the date of conclusion of the contracts/framework agreements and/or the fulfillment of certain conditions for their application;
- have provided for price review/ adjustments clauses, other than those provided for in G.E.O no. 15/2021, determined in relation to the inflation rate or other indices, the application of which leads, on the date of entry into force of this Emergency Ordinance, exclusively for the remainder to be performed, to a price adjustment amount lower than that resulting from the application of the provisions of G.E.O no. 47/2022, for the price difference up to the adjustment amount determined as a result of the application of this Emergency Ordinance.

The provisions of the G.E.O in discussion shall not apply to:

- public procurement/sectoral contracts/concession contracts/framework agreements relating to projects financed by non-reimbursable external funds;
- award procedures relating to projects financed by non-reimbursable external funds in progress on the date of entry into force of the Emergency Ordinance;
- projects financed by the NATO Security Investment Program, for which the price adjustments are made after approval by the NATO structures, as provided for in Article 3 para. (2) of Law no. 294/2007 on the implementation in Romania of projects financed by the NATO Security Investment Program, as subsequently amended and supplemented.

The determined adjustments shall be made exclusively for the remainder to be performed/provided/delivered at the date of entry into force of G.E.O no. 47/2022, and until the completion of the objectives/projects of the targeted investments.

Contractors are required to send within 45 days from the date of entry into force of G.E.O no. 47/2022 an address to the contracting entities to initiate legal proceedings for price adjustment, under penalty of losing the rights granted by this G.E.O. Requests may be issued and submitted electronically. The contracting entities shall, in turn, be required to carry out price adjustments by concluding additional acts within 45 days of expiry of the deadline for submission of the request for adjustment of the contract price.

If the award procedure is ongoing and no price revision clauses are included in the tender documentation, and:

- I. the award procedure is at a stage *prior* to the deadline for submission of bids, then:
 - contracting entities are required to take the necessary steps to amend the tender documentation by **including the adjustment clause**;
- II. the award procedure is at a stage *subsequent* to the stage at which the offers are submitted, then:
 - after completion of the procedures or direct procurements, contracts shall be concluded in accordance with the tender documentation or the documents relating to direct procurement; thereafter, the contractor shall be required to submit the request for adjustment to the contracting entity within 15 days of the conclusion of the contract, but no later than the date of issue of the contract performance order, under the sanction of losing the right. The addendum shall be concluded within 10 days of submission of the request.

The additional sums required to adjust contract prices will be charged to the state budget.



Price adjustments shall not be considered as substantial amendments to the contract/framework agreement. Therefore, they do not require the launch of a new award procedure, as an additional act to the existing contract is sufficient.

For additional details on this material, please do not hesitate to contact us.

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