

Moldova, Republic of

PARLIAMENT LAW No. 174 of 11-11-2021 (2021)

Unofficial translation

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Contents

Chapter I

GENERAL PROVISIONS

Chapter II

AREAS AND ASSETS OF IMPORTANCE FOR THE SECURITY OF THE STATE

Chapter III

SCREENING OF MAJOR INVESTMENTS FOR THE SECURITY OF THE STATE

CHANGE OF CONTROL CLAUSE

Chapter IV

FUNDING AND REPORTING

Chapter V

FINAL AND TRANSITIONAL PROVISIONS

Republic of Moldova

PARLIAMENT LAW No. 174 of 11-11-2021

on the mechanism for examining investments of importance for state security

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ALTERED

LP414 of 22.12.23, MO497/23.12.23 art.883; in force 23.12.23

The Parliament adopts this law.

Chapter I

GENERAL PROVISIONS

Article 1. Regulatory scope and purpose of the law

(1) This law establishes the conditions for investors to carry out investment activities in areas of importance for state security, attributions and mechanisms for state supervision of such investment activities. The provisions of Law no. 131/2012 on state control over entrepreneurial activity do not extend to the mechanisms of control and supervision by the state of investment activities falling under the provisions of this law.

[Art.1 para.(1) amended by LP414 of 22.12.23, MO497/23.12.23 art.883; in force 23.12.23]

(2) The purpose of this law is to protect investments made in areas of importance for state security and to increase the transparency of investments of importance for state security.

Article 2. Main notions

For the purposes of this law, the following main notions mean:

beneficial owner – beneficiary as defined in art. 3 of Law no. 308/2017 on preventing and combating money laundering and terrorist financing;

Council for the Promotion of Investment Projects of National Importance (hereinafter referred to as the Council) – a collegial body established by Government Decision no. 585/2016 on the Council for the Promotion of Investment Projects of National Importance, which aims to examine investment projects in areas of importance for state security, promotion, monitoring and evaluation of those projects;

control – situation in which the natural or legal person meets at least one of the conditions provided for in art. 203 para. (3) of the Civil Code no. 1107/2002, as well as corresponds to the situation provided for in para. (4) of the same article;

indirect holder/acquirer – person, including beneficial owner, who holds/acquires a share in the share capital of the legal person through another person over whom he exercises control;

international financial institution – financial institution established on the basis of agreements between states, including any multilateral development bank as defined in art. 4 item 1. of Law no. 184/2016 on financial guarantee contracts;

potential investor – a natural or legal person or group of such persons acting in concert and intending to carry out by any means, directly or indirectly, including as a beneficial owner, investment activity and/or transaction in areas of importance for state security;

qualified participation – direct or indirect holding of at least 10% of the share capital or voting rights of the legal person or holding that makes it possible to exercise an influence on the management of the legal person when taking decisions in the general meeting or in its management body, representing less than 10% of the share capital or voting rights of this legal person;

persons acting in concert – persons in the situations defined in the notion of "persons acting in concert" in Article 6 of Law no. 171/2012 on the capital market.

Article 3. Scope

(1) This law shall apply to the legal relationships related to the performance of investment activities by natural and legal persons who, by any means, directly or indirectly, individually or together with persons acting in concert, including as beneficial ownership, intend to carry out or carry out the following types of investment activity and/or transaction in areas of importance for state security (hereinafter – investments/investment activities):

(a) controlling, procuring/acquiring or increasing a qualifying holding in the form of shares or shares in the share capital of a legal person, including a legal person already making investments in areas of importance for state security, or controlling such a legal person;

b) the conclusion of a work concession contract or a service concession contract in accordance with Law no. 121/2018 on work concessions and service concessions, as well as concessions in the field of state defense and security, if the procedure for awarding and executing the concession contains information attributed to state secrecy under the conditions of Law no. 245/2008 on state secrets, the object of which are goods of importance for state security or is part of the areas of importance for state security, established by this law;

c) the conclusion of a public-private partnership contract in accordance with Law no. 179/2008 on the public-private partnership, whose object is goods of importance for state security or is part of the areas of importance for state security, established by this law;

d) concluding an investment agreement in areas of importance for state security in accordance with the provisions of Law no. 81/2004 on investments in entrepreneurial activity, whose object is goods of importance for state security or is part of areas of importance for state security, established by this law. If the subject matter of the investment agreement regulated by Art. 121 of Law no. 81/2004 on investments in entrepreneurial activity falls within one of the areas of importance for state security established by this law, that agreement is qualified as an investment agreement in areas of importance for state security;

e) the conclusion of a sale-purchase transaction of assets that are part of or belong to legal entities that already make investments in areas of importance for state security, the value of which represents at least 25% of the value of the assets of these legal entities, according to the latest financial statement;

f) the conclusion, in the name and/or on behalf of a legal person that already makes investments in areas of importance for the security of the State, of financial transactions, through one or more interrelated operations, in the form of credit/loan or subsidy, with persons from other States that are directly or indirectly controlled by the governments of other States.

(2) The provisions of this law do not apply to the investment activities and transactions referred to in paragraph (1):

- a) carried out by entities in the financial sector or those carried out with the participation of international financial institutions;
- b) regarding the acquisition of goods, equipment and services from local or foreign suppliers that do not affect the control over the operator in the field of importance for state security.

Chapter II

AREAS AND ASSETS OF IMPORTANCE FOR THE SECURITY OF THE STATE

Article 4. Areas of importance for state security

The areas of importance for state security are the following:

- a) activity in the hydrometeorological and geophysical field;
- b) radioactive waste management;
- c) the exploitation of infrastructure in the fields of energy, transport, water and sanitation, aerospace, defense, electoral;
- d) exploitation of artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, quantum and nuclear technologies, nanotechnologies and biotechnologies;
- e) the production of cryptographic means of information protection;
- f) the production and acquisition for the purpose of commercialization of the means of protecting information attributed to state secrets;
- g) the production of explosive materials for industrial use and the activities for their distribution;
- h) activities related to aviation security;
- i) the design, production, maintenance and operation of aircraft, including unmanned aircraft, and components thereof;
- j) design, production, maintenance and operation of systems and components used in air traffic management and the provision of air navigation services;
- k) the design, maintenance, and operation of aerodromes and heliports, including safety-impacting equipment used on them;
- l) the management of airports, bus stations, rail traffic, inland waterways, ports and quays for navigable traffic;
- m) television broadcasts/audiovisual services;

- n) the provision of mobile or fixed electronic communications networks and/or services;
- o) the provision of services in national ports;
- p) geological study of subsoil resources and/or exploration of deposits of useful natural substances;
- q) production, export, re-export, import of armaments, ammunition and military equipment; products, technologies and services that can be used in the manufacture and use of nuclear, chemical, biological and missile weapons;
- r) administration of public registers of the state, information security.

Article 5. Goods of importance for state security

(1) Assets of importance for the security of the state are understood to be the assets not subject to privatization included in the annex to Law no. 121/2007 on the administration and privatization of public property, as well as the assets subject to privatization whose list is approved by the Government, including those to be concessioned, transferred to duciary administration or in relation to which private investments are to be attracted for the development of commercial companies with public or public-private capital, if they refer to the areas of importance for state security established in art. 4 of this law.

(2) The list of goods of importance for state security shall be approved by Government decision.

Article 6 Restrictions on making investments in the areas of importance for state security

Investments in areas of importance for state security may not be made by natural and legal persons, including foreigners, who:

- a) act alone or in concert, including as beneficial owners, and are residents in jurisdictions that do not implement international transparency standards, or whose share capital includes holdings/participations of natural or legal persons, including foreign ones, directly or indirectly held by these persons, who act alone or in concert, including as beneficial owners, and are residents in jurisdictions that do not implement international transparency standards. The list of jurisdictions that do not implement international transparency standards is approved by the Government;
- b) have been involved in money laundering and terrorist financing activities;
- c) have been involved in activities affecting the security of the state or public order and have not honored the contractual obligations assumed within the transactions referred to in art. 3 para. (1) letters b)–d);
- d) could carry out illegal or criminal activities, based on justified information submitted by the competent state bodies;
- e) maintain or have maintained relations with institutions/authorities of other states or with natural or legal persons from other states that increase the risk or pose a threat to the national security of the Republic of Moldova;
- f) maintain or have maintained links with organized criminal groups, special services or groups of foreign states that have links with international terrorist organizations, with persons suspected of belonging to them and who increase the risk or pose a threat to the national security of the Republic of Moldova;

g) have been convicted, by a final court decision under the Criminal Code, for acts of corruption, money laundering or terrorist financing or for an offence under the criminal laws of foreign states that corresponds to the elements of a similar offence specified in the Criminal Code of the Republic of Moldova;

h) is under criminal investigation for committing a serious or particularly serious crime.

Chapter III

SCREENING OF MAJOR INVESTMENTS FOR THE SECURITY OF THE STATE

CHANGE OF CONTROL CLAUSE

Article 7. Request for prior approval of investments of importance for state security

(1) Any potential investor, prior to carrying out investment activities in the areas of importance for state security provided for in Article 4 or activities whose object constitutes goods of importance for state security provided for in Article 5, shall be obliged to obtain prior approval from the Council.

(2) In order to request prior approval, the potential investor shall submit documents and information referring to:

a) the structure of the share capital (of the shareholders/associates), including that of the beneficial owner;

b) the maximum value of the investment, expressed in monetary units;

c) the basic activity, products and commercial services;

d) the country or countries in which it operates and the main business partners in the country or abroad with whom it collaborates;

e) the financial statements for the last 3 years;

f) the source of the financial means for financing the investment;

g) the date on which the investment is planned to be made or on which it has been made;

h) the criminal record, in the case of natural persons shareholders/associates or beneficial owners;

i) the declaration regarding the intention to carry out the investment individually or in a concerted manner, as well as the supporting documents confirming the concerted action. The concerted action of the potential investor can also be ascertained by the Council on the basis of its own assessments.

(3) The Government is entitled to establish by normative act other documents and information than those provided for in para. (2), necessary for the examination of the request for prior approval.

4. The Council shall examine the request within 45 days of its receipt. If the application is not accompanied by all the necessary documents and information, the examination period starts to run from the date of receipt of all those documents and information.

(5) Within the term provided for in para. (4), but no later than the 30th day of the respective deadline, the Council is entitled to request, if necessary, additional documents and information that are relevant for the examination of the request for prior approval. The request shall be made in writing, specifying the documents and additional information to be submitted.

6. The prospective investor shall submit the requested additional documents and information no later than 20 days from the date of their request. During that period, the examination term provided for in para. (4) shall be suspended.

Article 8. Information review criteria

The examination of the information and documents provided for in art. 7 para. (2) shall be carried out in the light of the following criteria:

- a) the reputation, knowledge, skills and experience of the potential investor;
- b) the financial soundness of the potential investor, in particular in relation to the type of activity carried out in the areas of importance for state security as a result of the activity currently carried out and the one expected to be carried out after the completion of the investment;
- c) the existence of suspicions regarding the intended investment related to the commission of money laundering crimes or the financing of terrorist acts or other serious or particularly serious crimes;
- (d) whether the potential investor is controlled, directly or indirectly, by the government of a foreign state, including its public authorities/institutions or armed forces, including through its ownership structure or significant funding, and whether this may threaten the security of the state;
- e) the extent to which a proposed investment is likely to ensure, directly or indirectly, access to the personal data of citizens of the Republic of Moldova, of the governments of foreign states or of foreign persons who may exploit such information in a way that threatens the security of the state;
- f) the possibility that an investment will have the effect of intensifying or creating new cybersecurity vulnerabilities or the possibility that a government of a foreign state has the capacity to engage in cybersecurity activities that may affect national security.

Article 9. Council decisions

1. Following the examination of the potential investor's request for prior approval, the Council may adopt the following decisions:

- a) acceptance of the prior approval;
- b) refusal of prior approval;
- c) conditional acceptance of prior approval.

2. Decisions of the Council shall be adopted by a simple majority of votes of its members.

3. The Council shall communicate its decision in writing to the potential investor within 3 working days from the date of its adoption, stating the reasons for a refusal decision.

4. The Council shall adopt a decision accepting prior approval in the following situations:

- (a) following the cumulative examination of the criteria set out in Article 8, is satisfied that the quality of the potential investor, including its financial soundness in relation to the envisaged investment, is adequate;
 - b) has no suspicion that the actual beneficiary of the envisaged investment is a person other than the one declared in the application;
 - c) the information and documents provided by the potential investor are complete and/or do not contain erroneous data;
 - d) the envisaged investment will not affect the state's supply capacity with production resources indispensable for national security in crisis conditions.
- (5) The Council shall adopt the decision refusing prior approval if the application does not have documents and information certifying that it is not in the situations provided for by the criteria set out in Article 8.
- (6) In case of the adoption of the decision of conditional acceptance of the prior approval, the Council shall establish the conditions for compliance with the cumulative criteria provided for in Article 8 and a deadline for achieving them, but not more than 90 days.
- (7) Until the expiry of the term provided for in para. (6), the potential investor shall inform the Council in writing about the fulfilment of the conditions set out in the decision, with the presentation of the confirmatory documents and information provided for in Art. 7 para. 2. If the potential investor fails to submit written information on the fulfilment of the conditions set, the Council shall adopt a decision refusing prior approval.

Article 10. Requests for information

- (1) For the thorough examination of the requests of potential investors, the Council shall cooperate with central and local public administration authorities, public institutions, private sector entities from the Republic of Moldova and other countries.
- (2) The Council may request any national and other State authority and/or public institution involved to examine and submit information and/or documents that it deems relevant for the purpose of examining investments. The national public authority and/or institution may refuse to examine and present the information requested by the Council only in situations exhaustively regulated by the regulatory framework.
- (3) For the purpose of realizing the right provided for in para. (2), the Council may conclude collaboration agreements with the mentioned subjects, in compliance with the legal provisions on professional secrecy and personal data protection.

Article 11. Legal consequences arising in the absence of prior approval

- (1) If the investor carries out investment activities in the areas of importance for the state security provided for in Article 4 or whose object constitutes goods of importance for the state security provided for in Article 5 in violation of the provisions of Article 7, without the prior approval of the Council, the following legal consequences shall occur:

a) The Board orders the suspension of the exercise of the right to vote, the right to convene and conduct the general meeting of shareholders/associates, the right to introduce issues in the agenda, the right to propose candidates for the members of the management body, the right to receive dividends/income from the distribution of the net profit, in the case of investments provided for in art. 3 para. (1) letter a). The shares/shares with suspended voting rights are not excluded from the calculation when the general meeting of shareholders/associates is convened and when the quorum is established. If the suspended voting shares/shares constitute 50% or more of the voting shares/shares, the general meeting of shareholders/associates shall be deemed to have a quorum if it is attended by shareholders/associates who hold at least 25% of the voting rights of the entity. The shares/shares with suspended voting rights do not participate in the adoption of the resolutions regarding the issues included on the agenda of the general meeting of shareholders/associates;

b) The Council orders the suspension of the contracts/transactions, in the case of investments provided for in art. 3 para. (1) letters b)–f), until approval is obtained.

(2) Within 20 days from the date on which it learned about the investment made in violation of the provisions of Article 7, the Council shall inform the potential investor and the parties participating in the investment.

(3) The potential investors who have violated the provisions of art. 7 are obliged to request prior approval within 30 days from the date of the notification received from the Council or to sell the shares/shares acquired/acquired within 60 days from the date of the notification received from the Council, in the case of investments provided for in art. 3 para. (1) letter a), or to declare the termination of the contracts/transactions within 30 days from the date of notification received from the Council, in the case of investments provided for in art. 3 para. (1) letters b)–d).

(4) The Council may order the extension of the term provided for in para. (3) if it is necessary for the purpose of not admitting the endangerment of financial stability or if there is a justified public interest. The request for extension of the deadline is submitted by the potential investor 10 working days before the expiry of the previous deadline.

(5) In the event that it does not intend to start the process of requesting prior approval within the term provided for in para. (3), potential investors are entitled to alienate the shares/shares acquired in the case of investments provided for in art. 3 para. (1) letter a) or to declare the termination of contracts/transactions in the case of investments provided for in art. 3 para. (1) letters b)–f).

(6) If, within the deadlines provided for in para. (3) and (4) none of the actions provided for in para. (5), in the case of investments provided for in art. 3 para. (1) letter a), the executive body of the legal person, within no more than 15 days from the date of expiry of the term provided for in para. (4), issues the decision on the cancellation of the shares/shares and the issuance of new shares/shares in the same number and of the same class, in the case of joint stock companies, and in the same quota, in the case of limited liability companies.

Those decisions shall be notified to the Council within 5 days of their adoption.

(7) If, within the deadlines provided for in para. (3) and (4) none of the actions provided for in para. (5), in the case of investments provided for in art. 3 para. (1) letters b)–f), the Council, within 30 days, shall request the potential investor to terminate the contract and compensate for the damages caused by the investor.

(8) The provisions of para. (6) and (7) shall not apply in the case of investments provided for in Art. 3 para. (1) made following the finding that the object of the investment activities are assets obtained by donation or by another means of free transfer regulated by civil legislation or as a result of the reduction of the share capital. In this case, the Council orders the suspension of the contracts/transactions until approval is obtained. If the approval is not requested within the term provided for in para. (3) or if, following the examination carried out, the Council adopts the decision refusing prior approval, the provisions of para. (6) and (7).

Article 12. Change of control clause

- (1) The change of control clause is the provision in the contracts/transactions concluded within the investment activities carried out in the areas of importance for state security or whose object are goods of importance for state security, established by this law, which obliges the potential investor to obtain the approval of the Council in the event that the owner intends to transfer the control of the investment to another natural or legal person.
- (2) If the contracts/transactions concluded in the framework of investment activities carried out in areas of importance for state security or whose object are goods of importance for state security do not provide for the change of control clause, it shall be presumed.
- (3) The Council may not give acceptance if the natural or legal person taking over the investment falls under Article 6.

Article 13. Effects of non-compliance with the change clause control

If the party that has taken ownership or possession/use of an asset of importance for the security of the State established by this Law or has concluded contracts/transactions within the framework of the investment activities carried out in the areas of importance for the security of the State established by this Law has not requested the consent of the Council or if, as a result of the request, the acceptance has not been exposed and, at the same time, the party that has taken ownership or possession/use of an asset of importance for the security of the state concludes the transaction as a result of which another natural or legal person takes control over the investment, the other contracting party, as well as the Government are entitled, no later than 6 months from when they were informed about the change of control, to request the termination of the contract/transaction and compensation for the damage caused, regardless of the law applicable to the contract/transaction.

Article 13.1 Monitoring compliance with legal requirements

- (1) In order to ensure the possibility of verifying the manner in which compliance with the change of control clause is ensured, as well as to ensure continuous monitoring of the ownership structure and control structure of the party that has taken ownership or possession/use of an asset of importance for the security of the state, established by this law, or has concluded contracts/transactions within the framework of the investment activities carried out in the areas of importance for the security of the State, established by this Law, this Party is obliged, in all cases of the occurrence of new circumstances related to the beneficial owners, to inform the Council of this on its own initiative, regardless of whether the investments of this Party have been previously approved by the Council based on the provisions of this Law or have been made before the entry into force of this law.

(2) If, in the context of the application of the customer due diligence measures, provided for by Law no. 308/2017 on the prevention and combating of money laundering and terrorist financing, the reporting entities find inconsistencies between the information available in the State Register of Law Units regarding the beneficial owner and the information submitted by the client regarding the beneficial owner or other indications of a potential breach of the change of control clause, as well as in cases where such inconsistencies are identified by other authorities in the exercise of their legal powers, they shall inform the Council, which shall request information from that party on the inconsistencies identified.

(3) During the period necessary to provide the information provided for in para. (2), their examination by the Council and the undertaking of the actions provided for in para. (4)–(7) of this Article, the Council is entitled to take the actions provided for in Art. 11 para. (1) and (2), as well as to impose the temporary cessation of the validity of any permissive acts issued to the respective party or to the legal entity in which it has become a shareholder/associate as a result of the investments made. The Council's decision, as well as any subsequent decision to resume the validity of the suspended permissive act, shall be communicated to all the public authorities issuing the respective permissive acts and shall be enforceable from the moment of issue.

(4) If, as a result of the verifications carried out by the Council, the non-compliance with the change of control clause is confirmed or other situations are identified that make the party ineligible for the approval of investments in accordance with the provisions of Article 6 or 8, the Council shall notify that party and request it, within 60 days from the date of notification, as the case may be:

a) the alienation of the acquired shares/shares, in the case of investments provided for in art. 3 para. (1) letter a);

b) the declaration of the termination of the contracts/transactions, in the case of the investments provided for in art. 3 para. (1) letters b)–f).

(5) If the action prescribed by the Council has not been carried out within the term provided for in para. (4), in accordance with para. (4) letter a), the executive body of the legal person, within no more than 15 days from the date of expiry of the term provided for in para. (4), issues the decision on the cancellation of shares/shares and on the issuance of new shares/shares in the same number and of the same class, in the case of joint stock companies, and in the same quota, in the case of limited liability companies. The said decisions shall be brought to the attention of the Council within 5 days from the date of their issue.

(6) If, at the expiry of the term granted in accordance with para. (5), the executive body of the legal person has not taken the actions provided for by law, the Council is entitled to decide on the withdrawal of any permissive acts issued to the respective legal person. The Council's decision shall be communicated to all public authorities issuing those permissive acts and shall be enforceable from the moment of its issue.

(7) If the action prescribed by the Council has not been carried out within the term provided for in para. (4), in accordance with para. (4) letter b) of this article, in the case of investments provided for in art. 3 para. (1) (b) to (f), the Council shall notify the other Contracting Parties and the Government, which shall take the actions referred to in Article 13.

[Art.13.1 introduced by LP414 of 22.12.23, MO497/23.12.23 art.883; in force 23.12.23]

Article 14. Suspension of the execution of Council decisions in the administrative court

(1) By derogation from the provisions of art. 214 para. (1)–(7) of the Administrative Code no. 116/2018, until the final resolution of the case, the execution of the Council's decisions cannot be suspended.

(2) The final and irrevocable decision of the administrative court on the partial or total annulment of the Council decision shall be immediately transmitted to the Council and shall be published without delay on the official website of the Council.

Chapter IV

FUNDING AND REPORTING

Article 15. Financing of the examination of investments important for state security

1. The financing of the investment screening activity of importance for State security shall be determined by the Council, taking into account the objective of ensuring the effectiveness and efficiency of the deployment of the investment screening mechanism.

(2) The financing of the Council's activity shall be provided from the state budget and from other sources not prohibited by law.

Article 16 Reporting on the examination of investments important for state security.

(1) The Council shall prepare and submit annually, by March 31 of the year following the reporting year, to the Government, the Parliament and the Supreme Security Council its activity report.

(2) The Court of Accounts shall analyse, once every two years, the results of the examination of investments of importance for state security.

Chapter V

FINAL AND TRANSITIONAL PROVISIONS

Article 17.

(1) This law shall enter into force on the date of its publication in the Official Gazette of the Republic of Moldova.

(2) The Government, within 3 months from the date of entry into force of this law:

a) adopt the normative acts necessary for the implementation of this law, including approve the composition and organization of the Council's activity for the promotion of investment projects of national importance;

b) shall submit to the Parliament proposals for bringing the normative acts in accordance with this law;

c) bring its normative acts in accordance with this law.

(3) On the date this law comes into force, its provisions apply to all procedures related to investments in entrepreneurial activities, the administration and privatization of public property, public-private partnerships, and concessions conducted in accordance with special laws in the field, as well as concession contracts/transactions, privatization of public property, and public-private partnerships that are in progress, regardless of their date of conclusion.

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