

Romania

EMERGENCY ORDINANCE No 46 of 14 April 2022 on 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 screening of foreign direct investment in the Union and amending and supplementing (2022)

Unofficial translation

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EMERGENCY ORDINANCE No 46 of 14 April 2022 on 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 screening of foreign direct investment in the Union and amending and supplementing Competition Law No 21/1996

ISSUING: ROMANIAN GOVERNMENT

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In order to ensure compliance with the obligation of the Romanian State to adopt the necessary measures for the application 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 investments in the Union, published in the Official Journal of the European Union, L series, no. 79 I of 21 March 2019 (the Regulation),

having regard to the need for the urgent adoption at national level of legal provisions to create the appropriate regulatory framework, administrative mechanisms and instruments for the effective implementation of the Regulation, having regard to the need to correlate and harmonise national legislation with European Union legislation in the field of foreign direct investment screening, in order to ensure the functionality of the screening mechanism, having regard to the need to take the necessary measures as a matter of urgency, in accordance with Union law, to prevent circumvention of screening mechanisms and foreign direct investment screening decisions, whereas the adoption, at national level, of a normative act regulating the legal regime for the examination of foreign direct investments, as well as the designation of the national contact point had to be carried out by the Romanian State by 11 October 2020, the date from which the Regulation applies;

whereas foreign direct investment contributes to the Union's economic growth by strengthening its competitiveness, creating jobs and economies of scale, attracting capital, technology, innovation and expertise, and opening new markets for Union exports, and supports the achievement of the objectives set out in the Investment Plan for Europe and contributes to other Union projects and programmes, whereas the foreign direct investment screening and cooperation framework must provide the necessary means to address security or public order risks in a comprehensive manner, as well as to adapt to changing circumstances, while maintaining the necessary flexibility for Member States to screen foreign direct investment on security or public order grounds;

taking into account their individual situations and national specificities, considering the fact that the lack

of immediate legislative intervention regarding the establishment of national rules regarding the procedure for examining foreign direct investments and cooperation with the Member States and the European Commission has the effect of creating a state of legal uncertainty and the impossibility for the Romanian State to fulfil the obligations arising from the application of the Regulation, the urgency of adopting this normative act lies in the need to create the national legal framework that would allow the application of Regulation (EU) 2019/452, otherwise, Romania risks the impossibility of implementing the European rules on foreign direct investments due to a legislative barrier.

In this respect, the importance of the regulated object adds to the need for application, as it concerns a subject that is also related to the field of national defense and security and which has as a direct consequence a major impact on the evolution of the national economy.

At the same time, the non-application of the Regulation has the ability to disqualify Romania as a possible partner in foreign direct investments, which brings a major detriment to the national economy, in the conditions of the state of emergency created by the SARS-CoV-2 virus pandemic.

Also, taking into account the significant impact that the current international security context has on the economic environment, as well as the international commitments assumed by Romania as a member state of the European Union, elements that may justify the inclusion in the hypothesis of an extraordinary situation, the regulation of which cannot be postponed and which requires the urgent adoption of appropriate measures to prevent and/or stop negative consequences,

This draft normative act aims to ensure the existence of a regulatory framework characterized by predictability, certainty and legal certainty, by concretely regulating the mechanism for examining foreign direct investments in Romania, in order to ensure the protection of major public interests such as national security, the proper functioning of market mechanisms and, in general, of the economy, as well as ensuring the guarantees of protection of public order.

Whereas the absence of an adequate legal framework may have negative consequences, consisting in the risk of the European Commission initiating a possible infringement procedure for Romania as a Member State of the European Union,

taking into account that the failure to promote the draft normative act may have negative consequences for the public benefit, which may be affected by legal uncertainty regarding foreign direct investment, considering that these elements concern the general public interest and constitute an extraordinary situation, the regulation of which cannot be postponed, Pursuant to art. 115 para. (4) of the Constitution of Romania, republished,

The Government of Romania adopts this Emergency Ordinance.

Article 1 Subject matter and scope

(1) This Emergency Ordinance lays down the legal and institutional framework necessary for the application of Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investment into the Union, hereinafter referred to as the Regulation, for the protection of essential security and public order interests.

(2) This Emergency Ordinance is without prejudice to the international agreements and conventions to which Romania is a party.

(3) The provisions of this Ordinance do not apply to portfolio investments, as defined in art. 2 letter b) of the Government Emergency Ordinance no. 92/1997 on the stimulation of direct investments, approved with amendments and completions by Law no. 241/1998, as subsequently amended.

Article 2 Definitions

For the purposes of this Emergency Ordinance, the terms and expressions below have the following meanings:

a) Foreign Investor:

1. natural person, who is not a citizen of a member state of the European Union, who has made or intends to make a foreign direct investment in Romania;
2. a legal person, whose registered office is not located in a Member State of the European Union, which has made or intends to make a foreign direct investment in Romania;
3. legal person, whose registered office is located in a Member State of the European Union, which has made or intends to make a foreign direct investment in Romania, in which control is exercised directly or indirectly by: a natural person who is not a citizen of a Member State of the European Union, a legal person whose registered office is not located in a Member State of the European Union or another legal entity, without legal personality, organised under the laws of a state that is not a member of the European Union;
4. trustee of an entity without legal personality that has made or intends to make a foreign direct investment in Romania 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 does not have his registered office in a Member State of the European Union, in the case of a legal person, or if that entity was formed under the laws of a State which is not a Member State of the European Union;

b) foreign direct investment – investment of any nature made by a foreign investor for the purpose of

establishing or maintaining lasting and direct links between the foreign investor and the targeted enterprise or a separate organizational unit of an enterprise, to which these funds are made available or are to be made available for carrying out an economic activity in Romania, and which allow the foreign investor to exercise control over the management of the company.

A foreign direct investment is also made when there is a change in the ownership structure of a foreign investor who is a legal person, if this change in respect of the legal person makes it possible for a person to exercise control, directly or indirectly, by:

1. natural person who is not a citizen of a Member State of the European Union;
 2. legal person whose registered office is not located in a Member State of the European Union, or
 3. another legal entity, without legal personality, organised under the laws of a State that is not a member of the European Union;
- c) new investment – initial investment in tangible and intangible assets within the same perimeter, related to the start-up of a new enterprise, the expansion of the capacity of an existing enterprise, the diversification of an enterprise's production through products that have not been previously manufactured, or a fundamental change in the overall production process of an existing enterprise. The establishment of a new company represents the creation of a new location for carrying out the activity for which the financing is requested, technologically independent of other existing units. The expansion of the capacity of an existing enterprise represents the increase of the production capacity in the existing site due to the existence of an unfulfilled demand. The diversification of the production of an existing enterprise represents the obtaining of products or services that were not previously made in the respective unit;
- d) control - defined according to the provisions of art. 9 para. (5) and (6) of the Competition Law no. 21/1996, republished, with subsequent amendments and completions;
- e) enterprise - defined according to the provisions of art. 2 of Law no. 21/1996, republished, with subsequent amendments and completions;
- f) Commission for the Examination of Foreign Direct Investments, hereinafter referred to as CEISD or Commission - collegiate body without legal personality, subordinated to the Government of Romania, which has the attributions of examining foreign direct investments according to the provisions of the Regulation and of this Emergency Ordinance and issuing examination opinions;
- g) application for authorization of foreign direct investment – the application submitted by the persons referred to in letter a) to the CEISD, having as object the authorization of a foreign direct investment according to the provisions of art. 3 and 9.

Article 3 Foreign direct investment subject to authorisation

(1) Foreign direct investments as defined in Article 2(b) and new investments as defined in Article 2(c) which:

- a) have as object the fields of activity provided for in art. 2 of the Decision of the Supreme Council of National Defense no. 73/2012 regarding the application of art. 6 para. (9) of the Competition Law no. 21/1996, republished, with subsequent amendments and completions, in relation to the criteria provided for in art. 4 of the Regulation; and
- b) whose value exceeds 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 of the year prior to the completion of the operation.

(2) By exception to the provisions of para. (1) letter b), foreign direct investments that do not exceed the threshold of EUR 2,000,000 may also be subject to examination and approval by the CEISD, if, by its nature or potential effects, in relation to the criteria provided for in art. 4 of the Regulation, they may have an impact on public security or order or pose risks to them.

(3) If a foreign direct investment made by a foreign investor results in the change of the effective control of one or more enterprises, within the meaning of the provisions of art. 9 para. (1) of Law no. 21/1996, republished, with subsequent amendments and completions, also including the operations leading to the creation of joint ventures, as provided for in the Companies Law no. 31/1990, republished, with subsequent amendments and completions, and the object of activity is circumscribed to the areas established in art. 2 of the Decision of the Supreme Council of National Defense no. 73/2012, the foreign investor will submit an application for authorization under the conditions of this Emergency Ordinance, regardless of whether or not it represents an economic concentration within the meaning of Law no. 21/1996, republished, with subsequent amendments and completions.

(4) If a foreign direct investment also constitutes an economic concentration falling under Law no. 21/1996, republished, with subsequent amendments and completions, the foreign investor shall submit both an application for authorization under the conditions of this Emergency Ordinance, and a notification of an economic concentration within the meaning of Law no. 21/1996, republished, with subsequent amendments and completions. In this case, the procedure provided by Law no. 21/1996, republished, with subsequent amendments and completions, will be finalized depending on the decision on the resolution of the authorization application issued in accordance with the provisions of this

on the resolution of the authorization application issued in accordance with the provisions of this Emergency Ordinance.

Article 4 Persons obliged to submit applications for authorization of foreign direct investments

(1) Foreign investors defined according to the provisions of art. 2 letter a) who wish to make a foreign direct investment defined in art. 2 letter b) and a new investment defined in art. 2 letter c), subject to examination and approval according to the provisions of art. (1), have the obligation to submit an application for authorization under the conditions of this Emergency Ordinance.

(2) By exception to the provisions of para. (1), and foreign investors who wish to make a foreign direct investment under other regulations and who meet the conditions provided for in art. 3 para. (1) have the obligation to submit an application for authorization under the conditions of this Emergency Ordinance, the provisions of art. 17 being applied accordingly.

(3) In the case of foreign direct investments that are made through the merger of two or more companies, applications for authorization are submitted by each of the parties involved. In other cases, the application for authorisation is submitted by the person, undertaking or undertakings that acquires/acquires control over one or more undertakings or parts thereof, respectively the one that makes/creates a new investment.

(4) The responsibility for the accuracy and completeness of the information provided lies with the requesting party.

Article 5 Implementation of a foreign direct investment

(1) It is forbidden to make a foreign direct investment before its authorization; This is sanctioned according to the provisions of art. 12 para. (1) letter b).

(2) The CEISD may refer the matter ex officio to the implementation of a foreign direct investment that could be the subject of this Emergency Ordinance and in respect of which no application for authorisation has been submitted, triggering the examination procedure provided for in Article 9.

(3) If an authority of the Romanian State finds, justifiably, that it is necessary to initiate the procedures for the examination of the foreign investment, it shall notify the CEISD, which, if it considers the request to be well-founded, shall initiate the examination procedures under the conditions of this Emergency Ordinance.

(4) In the cases provided for in para. (2) and (3), the CEISD may request the parties involved to go through the procedures provided for in this Emergency Ordinance, being able to propose any of the solutions provided for in art. 9 para. (2).

(5) In order to apply the provisions of this Emergency Ordinance, the CEISD may take into account well-founded and relevant information received from economic operators, representatives of civil society or social partners, such as trade unions, in relation to a foreign direct investment likely to affect security or public order.

Article 6 Submission of applications for authorisation of foreign direct investment

(1) The foreign investor referred to in Article 2 letter a), who wishes to make a foreign direct investment in Romania, under the conditions of Article 2 letter b), and a new investment defined in Article 2 letter c), shall submit to the Secretariat of the Commission for the Examination of Foreign Direct Investments CEISD, provided by a specialized structure within the Competition Council, an application for authorization of foreign direct investment, hereinafter referred to as the application for authorisation.

(2) The application for authorization shall include at least the information provided for in art. 9 para. (2) of the Regulation.

(3) Applications for authorization are submitted in Romanian and English, on paper and in electronic format. The documents attached to the application shall be submitted in original and/or copies, the copies being certified, for compliance, by the parties submitting the application or by their representatives, authorized to represent them.

(4) In the event that it deems it necessary to solve the application for authorization, the CEISD, through the Secretariat, will ask the foreign investor to complete the application for authorization with additional information regarding the clarification of the object of the submitted application. In this case, the deadline for solving the application runs from the date of the complete declaration of the application for authorization.

Article 7 CEISD Foreign Direct Investment Review Committee

(1) For the purpose of applying the provisions of the Regulation and of this Emergency Ordinance, the Commission for the Examination of Foreign Direct Investments, a collegiate body without legal personality, subordinated to the Government of Romania, shall be constituted by decision of the Prime Minister, within 30 days from the date of entry into force of this Emergency Ordinance, which shall consist of the following members:

- a) a representative of the Prime Minister from the Government's working apparatus, who will also have the capacity of President of the Commission;
- b) the President of the Competition Council or a member of the Plenum of the Competition Council;
- c) a representative of the General Secretariat of the Government;

- d) a representative of the Ministry of Economy;
- e) a representative of the Ministry of Entrepreneurship and Tourism;
- f) a representative of the Ministry of Transport and Infrastructure;
- g) a representative of the Ministry of Research, Innovation and Digitalization;
- h) a representative of the Ministry of Finance;
- i) a representative of the Ministry of National Defense;
- j) a representative of the Ministry of Internal Affairs;
- k) a representative of the Ministry of Health;
- l) a representative of the Ministry of Foreign Affairs.

(2) The nomination of the full members of the CEISD, as well as of an alternate, who will participate in the meetings of the CEISD in the absence of the full member, shall be made by the head of each institution provided for in para. (1). The nominations shall be sent to the Prime Minister and, in copy, to the CEISD Secretariat within 20 days from the date of entry into force of this Emergency Ordinance, in order to issue the decision provided for in para. (1).

(3) The full and alternate members of the CEISD will be appointed for a term of 4 years, with the possibility of its renewal. The level of representation in the case of full members will be at least secretary of state, and of alternate members by at least director.

(4) The mandate of member of the CEISD is terminated by the expiry of the term of office, resignation, death, revocation, termination or suspension of service relationships, definitive impossibility of exercise, respectively cannot perform his/her duties for more than 60 consecutive days.

(5) The replacement of CEISD members is made by decision of the Prime Minister based on a new nomination made according to the provisions of para. (2).

(6) Within CEISD, representatives of the Romanian Intelligence Service and the Foreign Intelligence Service have the status of permanent guests.

(7) At the request of the CEISD, the Romanian Intelligence Service and the Foreign Intelligence Service shall send opinions, in accordance with the specific attributions, which shall be communicated to the CEISD, within 20 days from the request at the latest.

(8) Within the CEISD there will be a working group made up of experts from the institutions referred to in para. (1), which shall meet monthly or whenever necessary. They will be appointed by the administrative act of the head of the institutions they represent, which shall be communicated to the CEISD Secretariat, within 30 days from the date of entry into force of this Emergency Ordinance. The activity of the experts will consist in the elaboration of analyses, specialized studies, recommendations or non-binding opinions for the members of the CEISD, which may be taken into account when analyzing the applications for authorization.

(9) The CEISD shall meet validly in the presence of the majority of the members in office. The meetings of the CEISD are convened by its president, through the care of the CEISD Secretariat. At the CEISD meetings, the opinions on the authorization of foreign direct investments are adopted by the vote of the majority of the members present.

(10) In order to fulfill the duties arising from the application of the Regulation and this Emergency Ordinance, a specialized structure shall be established, within the limits of the approved budgetary funds, within the Competition Council that will ensure the secretariat and functioning of the CEISD.

Article 8 Cooperation mechanism on foreign direct investment

The CEISD, through its secretariat, ensures compliance with the provisions of Articles 6 and 7 of the Regulation on the mechanism for cooperation with the Member States of the European Union and the European Commission with regard to foreign direct investment.

Article 9 Examination and resolution of applications for authorisation of foreign direct investments

(1) In order to solve the applications for authorization of foreign direct investment, the CEISD will refer to the criteria provided in art. 4 of the Regulation.

(2) Following the analysis carried out according to the criteria set out in Article 4 of the Regulation, the CEISD will issue an opinion on the applications for authorization of foreign direct investment, declared complete, deciding, as the case may be:

a) authorizing foreign direct investment in Romania if it considers that it does not affect the security or public order of Romania and is not likely to affect projects or programs of interest to the European Union;

b) conditional authorization of foreign direct investment in Romania in the situation in which it considers that it can be achieved following behavioral or structural measures/commitments of the foreign investor; in this situation, the foreign investment may be made or may continue to exist exclusively within the limits and under the provisions and conditions specified in the conditional authorization decision;

c) the rejection of the application for authorization of foreign direct investment in the situation in which it considers that it affects the security or public order of Romania or is likely to affect projects or programs of interest to the European Union.

(3) CEISD will issue the opinion provided for in para. (2) and in the event that the procedure for

authorizing the foreign investment is carried out ex post, according to the provisions of art. 2 letter b) sentence II.

(4) The CEISD opinion provided for in para. (2) shall be compliant in the situation regulated in letter a) and advisory in the situations regulated in letters b) and c).

(5) The CEISD opinion proposing the solution referred to in para. (2) letter a) shall be sent to the Competition Council which, within 30 days, by decision, shall order the authorization of the foreign direct investment according to the opinion received.

(6) If the opinion sent by the CEISD proposes one of the solutions provided for in para. (2) letters b) and c), it is sent to the Government in order to issue a decision by which it conditionally authorizes or rejects the application for authorization of foreign direct investment. If the proposed solution is the one in para. (2) letter b), the CEISD will also transmit the proposed commitments for the conditional authorization of foreign direct investment. The conditions, criteria, deadlines and procedure for the acceptance and evaluation of the proposed commitments will be established by Government decision.

(7) If the foreign direct investment to be made in Romania is likely to affect projects or programs of interest to the European Union, when issuing the opinion, the CEISD will take into account the opinion of the European Commission, submitted according to the provisions of Article 8 of the Regulation.

(8) Depending on the specifics of the foreign direct investment examined and if it deems it necessary, the CEISD may request points of view from other public authorities or institutions.

(9) The points of view provided in para. (8) shall be consultative in nature and shall be communicated to the CEISD within 20 days from the request at the latest.

(10) If, taking into account the specificity and complexity of the application for authorisation analysed or its impact on security and public order, as well as on projects and programmes of interest to the European Union, the CEISD decides that it is necessary to consult the Supreme Council of National Defence, hereinafter referred to as the CSAT, the CEISD shall initiate a detailed investigation of the application for authorisation, immediately informing the applicant.

(11) The initiation of the procedure regarding the thorough investigation of the authorization application by the Competition Council according to the provisions of para. (10) may also take place at the request of the CSAT, when it has data or information on the possible application of this Emergency Ordinance in the event of an application for authorisation pending before the CEISD.

(12) Within the procedure provided for in para. (10), CEISD will request the CSAT to issue an opinion that will be communicated within 90 days from the request. The CSAT opinion is in accordance with the solutions that the Competition Council or the Romanian Government may pronounce according to the provisions of para. (5) and (6).

(13) The provisions of this Emergency Ordinance do not affect the role and powers conferred on the CSAT, provided for by the Romanian Constitution, republished, and by Law no. 415/2002 on the organization and functioning of the Supreme Council of National Defense, with subsequent amendments.

(14) The issuance of the opinion by the CEISD shall be carried out within no more than 60 days from the date on which the notification is declared complete, containing all the information and documents required from the person who submitted the application for authorization, as well as, as the case may be, the opinions provided for in para. (5)-(7) and (10).

(15) If there are data or indications that a foreign direct investment has been authorized on the basis of the provision of inaccurate or incomplete information by the foreign investor, the CEISD shall reinstitute the procedures for its examination, and may propose any of the solutions provided for in para. (2).

(16) The decisions of the Competition Council regarding the applications for authorization of foreign investments shall be communicated to the investor, through the care of the CEISD Secretariat, within 45 days from their adoption at the latest.

(17) The decisions of the Competition Council may be appealed according to the provisions of art. 19 para. (7) of Law no. 21/1996, republished, with subsequent amendments and completions.

(18) The decisions of the Competition Council by which fines are imposed constitute enforceable titles, without any other formality, within 30 days from their communication.

(19) The court may, on request, order the suspension of the execution of the contested decision. In the case of fines, the suspension will be ordered only on the condition of payment of a deposit established according to the provisions of Law no. 207/2015 regarding the Fiscal Procedure Code, with subsequent amendments and completions, regarding budgetary receivables.

(20) The rights and obligations arising from the authorisation decision, the conditional authorisation decision or the prohibition decision, under the conditions of this Emergency Ordinance, shall not be transferred to the legal successor of the holder of the decision or decision to which the decision or decision was issued by the Competition Council or the Romanian Government.

Article 10 Measures to make foreign direct investment in the media transparent

(1) Before making the foreign investment that has as its object an enterprise that either holds an audiovisual license at national, regional or local level, or produces a periodical publication with an

audiovisual license at national, regional or local level, or produces a periodical publication with an average circulation of at least 5,000 printed copies/day in the last calendar year, or has a web portal with at least 10,000 accesses/month, CEISD requires the foreign investor to make the information regarding the foreign investment transparent, before the initiation of the procedures provided for by this Emergency Ordinance.

(2) The CEISD submits to public consultation, for a period of 30 days, the information on the media enterprise. If the CEISD does not find any reason for initiating the foreign investment examination procedures, it shall be considered that the foreign investment does not endanger the security or public order of Romania.

(3) The preliminary findings of the CEISD, prior to the examination of the foreign investment, do not constitute an administrative act and cannot be subject to review of legality in administrative litigation, except once the administrative act by which the application for authorization of foreign direct investment is resolved is challenged.

Article 11 Confidentiality of information

(1) During the procedures for analyzing the authorization applications, the documents containing classified information or confidential information are used separately from the other documents in the file, in compliance with the protection regime imposed by the legislation in the field, for these categories of data.

(2) Where certain information underlying the issuance of the authorisation decision, conditional authorisation decision and prohibition decision is classified information or confidential information, according to the Regulation, the basis of the decision or decision shall include the information on which the decision was based only by reference to the classification level or details of the confidentiality of that information.

(3) Persons who become aware of classified/confidential information or facts that constitute commercial, banking or other similar secrets protected by law during the period in which they carry out activities provided for by this Emergency Ordinance, including after leaving, in any way, the activity carried out, have the obligation not to disclose/maintain confidentiality regarding this information.

(4) The CEISD has the obligation to use the information obtained only for the purpose of carrying out the investment examination, according to the provisions of this Emergency Ordinance.

(5) Notices and information submitted by state authorities, as well as documents containing classified information or confidential information under the Regulation are not intended for publicity and are not subject to laws regulating freedom of access to information.

(6) In judicial proceedings conducted on the basis of an action brought against a decision or decision of the Government issued pursuant to this Emergency Ordinance, access to classified information shall be made only in accordance with the legal provisions in force, if this does not endanger the security of the State, its sovereignty, territorial integrity, democratic foundations, the lives or health of persons or the activities of the security authorities, defense and public order.

(7) The evidence shall be administered in compliance with the obligation to keep classified or confidential information secret. Witness statements on these situations may be made only if the person who has the obligation to maintain confidentiality is exempted from this obligation by the competent authority.

Article 12 Penalties

(1) The following actions of the foreign investor constitute a contravention, if they do not constitute a crime, and are sanctioned, by way of derogation from the provisions of art. 8 para. (2) letter a) of Government Ordinance no. 2/2001 regarding the legal regime of contraventions, approved with amendments and completions by Law no. 180/2002, with subsequent amendments and completions, with a fine not exceeding 10% of the total global turnover from the financial year prior to the sanctioning:

- a) intentionally providing inaccurate, incomplete or misleading information in an application for authorisation of foreign direct investment;
- b) the implementation of a foreign direct investment without its authorisation under the conditions of this Emergency Ordinance, committed intentionally or negligently;
- c) the implementation of the foreign direct investment with the non-compliance or violation of the commitments assumed by the conditional authorization decision provided for in art. 9 para. (2) letter b), committed intentionally or negligently.

(2) By exception to the provisions of para. (1), if, in the financial year prior to the sanction, the enterprise did not record a turnover or it cannot be determined, the turnover for the financial year in which the enterprise recorded a turnover, the year immediately prior to the reference year for the calculation of the turnover for the purpose of applying the sanction, shall be taken into account. In the event that the company did not achieve a turnover in the year prior to the reference year for the purpose of applying the sanction, the last turnover recorded by the company will be taken into account.

(3) In the case of newly established enterprises as a result of a foreign direct investment, which did not

register a turnover in the year prior to the sanction, they will be sanctioned with a fine between 10,000,000 lei and 50,000,000 lei.

(4) The right of the Competition Council to apply contravention sanctions for violating the provisions of this Emergency Ordinance is prescribed as follows:

- a) within 3 years, in case of committing the contravention provided for in para. (1) letter a);
- b) within 5 years, in case of committing one of the contraventions provided for in para. (1) letters b) and c).

(5) The prescription of the Competition Council's right to apply sanctions begins to run from the date of the infringement. In the case of infringements of a continuous or repeatable nature, the limitation period begins to run from the date of termination of the last anti-competitive act or fact in question.

(6) The request for written information sent by the Competition Council for the purpose of investigating a violation of this Emergency Ordinance interrupts the course of the limitation periods provided for in para. (4). The interruption of the limitation period takes effect from the date of communication of the request by the Competition Council, made to at least one economic operator that participated in the commission of the violation of the law. The interruption of the limitation period produces its effects vis-à-vis all economic operators or all associations of economic operators that participated in the commission of the infringement of the law.

(7) In case of interruption of the limitation period, a new term, with a similar duration, begins to run from the date on which the Competition Council sent the request referred to in para. (6). The limitation period shall expire at the latest on the day on which the period equal to twice the limitation period, applicable for the commission of the infringement in question, is completed, in the event that the Competition Council has not imposed any of the sanctions provided for in this Emergency Ordinance.

(8) The limitation period for the application of sanctions is suspended while the decision of the Competition Council is pending before the courts.

(9) The contraventions provided for in para. (1) shall be ascertained and sanctioned by the Competition Council by decision, which may be appealed to the Bucharest Court of Appeal, Administrative and Tax Litigation Section, within 30 days from the communication. The sentence will be pronounced without the right of appeal, against which an appeal may be filed with the High Court of Cassation and Justice, Administrative and Fiscal Litigation Section, within 30 days from the communication.

(10) The decisions adopted by the Competition Council pursuant to para. (9) and art. 9 para. (17) shall be published on the institution's website, taking into account the legitimate interests of the parties involved, so that trade secrets are not disclosed and confidential data are respected.

Article 13 International cooperation

Pursuant to Article 13 of the Regulation, the Romanian State may cooperate with the responsible authorities of third countries on matters relating to the examination of foreign direct investments for reasons of security and public order.

Article 14 National Contact Point

In order to apply the Regulation and this Emergency Ordinance, the Competition Council is designated, through the specialized structure that provides the CEISD Secretariat, as the national point of contact in relation to the European Commission and the other Member States of the European Union.

Article 15 Processing of personal data

(1) Any processing of personal data, pursuant to the Regulation or this Emergency Ordinance, shall be carried out in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC and Regulation (EU) 2018/1.725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) no. 45/2001 and Decision no. 1.247/2002/EC and only to the extent necessary for the examination of foreign direct investment by Member States and to ensure the effectiveness of the cooperation provided for by the Regulation.

(2) Personal data related to the implementation of the Regulation or this Emergency Ordinance shall be kept only for the period necessary for the fulfilment of the purposes for which they were collected.

Article 16 Implementing rules

(1) 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.

(2) The organization and functioning regulations of the CEISD Secretariat will be approved by order of the President of the Competition Council.

Article 17 Transitional provisions

(1) The provisions of this Emergency Ordinance shall also apply to ongoing foreign investments for which the intention to conclude an agreement has been announced or, in the case of a public offer, the

parties have announced their intention to make such an offer. In order to demonstrate the intention to conclude an agreement, the parties must submit a preliminary contract or any other preliminary agreement demonstrating beyond doubt the intention to make the foreign investment.

(2) The provisions on contravention provided for in art. 12 shall enter into force 30 days after the date of publication of this Emergency Ordinance and shall be supplemented by the general framework on the matter, respectively Government Ordinance no. 2/2001, approved with amendments and completions by Law no. 180/2002, with subsequent amendments and completions.

Article 18

The Competition Law no. 21/1996, republished in the Official Gazette of Romania, Part I, no. 153 of 29 February 2016, as subsequently amended and supplemented, is amended and supplemented as follows:

1. In Article 19(4), after letter f), a new letter is inserted, letter g), with the following content:

g) the authorisation of foreign direct investment in accordance with Regulation (EU) 452/2019 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investment in the Union;

2. In Article 25(1), after point (t), a new point (u) shall be inserted, which shall read as follows:

u) ensures the application of and compliance with the provisions of Regulation (EU) No 452/2019 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investment in the Union, published in the Official Journal of the European Union, L series, no. 79 I of 21 March 2019, as well as any subsequent regulations.

3. After Article 31, a new Article shall be inserted, Article 31¹, with the following content:

Article 31¹

(1) The members of the Plenum of the Competition Council, as well as the staff of the Competition Council who become aware of classified, confidential information or facts/actions that constitute commercial, banking or other secrets or sensitive information protected by the law or the internal regulations of the Competition Council, during the period in which they carry out activities related to the application of this law, have the obligation not to disclose and to maintain confidentiality regarding these information.

(2) The obligation to maintain the confidentiality of information, provided for in para. (1), subsists regardless of whether or not the person is still a member of the Plenum of the Competition Council or an employee of the Competition Council.

(3) Failure to comply with the provisions of para. (1) and (2) entails administrative, civil or criminal sanctions, as the case may be, under the conditions of the law.

4. In Article 47, paragraphs (9) to (12) shall be amended and shall read as follows:

(9) In situations where an operation to take control of enterprises or assets poses risks to national security, the Government, according to the opinion of the Commission for the Examination of Foreign Direct Investments, will issue a decision prohibiting it, in compliance with the competence of the European Commission in this field.

(10) The Competition Council will inform the Commission for the Examination of Foreign Direct Investments in relation to the economic concentration operations that are notified to it, which are likely to be analyzed from the point of view of national security. The opinion of the Commission for the examination of foreign direct investments will be issued within 30 days from the information sent by the Competition Council.

(11) In the event that the Commission for the Examination of Foreign Direct Investments informs the Competition Council that a notified economic concentration is likely to pose risks to national security, the deadlines provided for in para. (1)-(4) shall be suspended from the date of this communication.

(12) The public authorities and institutions with competences in the field of national security may request from the Competition Council any information and documents necessary for the application of the provisions of para. (9). The provisions of art. 34 para. (1), Art. 53 and Art.

54 respectively shall be applied accordingly.

5. In Article 47, after paragraph (12), a new paragraph is inserted, paragraph (13), with the following content:

(13) If a decision is issued prohibiting the operation examined according to the provisions of para. (9), the procedure before the Competition Council shall cease.

6. After Article 71, a new article is inserted, Article 71¹, with the following content:

Article 71¹

The protection of the President of the Competition Council is ensured by the Protection and Guard Service, under the conditions of the law.

PRIME MINISTER

NICOLAE-IONEL CIUCĂ Countersigned:

The President of the Competition Council,

Bogdan Marius Chiritoiu

Bogdan Marian Crințeru
The Minister of Economy,
Florin Marian Spătaru
The Secretary General of the Government,
Marian Neacșu
Head of the Prime Minister's Chancellery,
Mircea Abrudean
p. Minister of Foreign Affairs,
Cornel Feruță,
Secretary of State
The Minister of National Defence,
Vasile Dîncu
The Minister of Internal Affairs,
Lucian Nicolae Bode
p. Minister of Entrepreneurship and Tourism,
Florin-Sergiu Dobrescu,
Secretary of State
Minister of Research, Innovation and Digitalization,
Marcel-Ioan Boloș
Minister of Health,
Alexandru Rafila
Minister of Finance,
Adrian Căciu Bucharest, April 14, 2022.
No. 46.
