

CELIS Issue Note

on

Formal and Informal Guidance

Romania, 2025

by

**Georgiana Bădescu, CELIS Country Reporter for Romania
and Cristiana Manea, CELIS Assistant Country Reporter for
Romania**

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Abstract

Since the entry into force of the FDI regime in 2022, the Romanian FDI authority has been reviewing more than 1,000 filings and provided guidance to potential investors in investments with a Romanian nexus. Investors are able to seek guidance via the Secretariat of the FDI Screening Commission, prior to the submission of a filing.

Guidance is usually sought in relation to the potential nexus for deals in more critical sectors, the broad scope of the sensitive sectors, or the allocation of the investment value. In 2025, the authority published a first set of draft Guidelines aimed at providing more clarity on essential concepts relevant for FDI screening in Romania. The authority usually encourages investors to submit filings whenever there is uncertainty on the applicability of the Romanian FDI regime (e.g. the investment value cannot be reverse engineered or allocated beyond any doubt).

Authors

Georgiana Bădescu is Romanian lawyer with 20 years of practice since Bar admission. She is a partner at Schoenherr and head of the firm's competition, EU & foreign trade practice group in Romania and Moldova, and of the data protection team in Romania. Her experience covers the full range of competition matters. Relevant projects include a consistent series of national and EU-level merger control cases, advice in virtually all large-scale sector inquiries or investigations for potential breaches conducted by the national competition authority, various competition assessments, general competition advice to a strong portfolio of clients, as well as state aid matters. She has advised on a considerable number of foreign direct investment filings in Romania. Georgiana is actively involved in advocacy projects, including legislation drafting in her areas of practice. Georgiana graduated from the University of Bucharest, Faculty of Law, Bucharest/Romania (Law Degree 2004) and the Université Paris 1 Panthéon Sorbonne, Collège Juridique d'Etudes Européennes, Paris/France (Maitrise, 2004).

Cristiana Manea is a Romanian lawyer with over 10 years of experience since Bar admission. Currently a managing attorney at law at Schoenherr Romania, Cristiana specialises in competition, EU & foreign trade law. She has provided legal advice on the full range of competition matters, as well as on a considerable number of foreign direct investment filings in Romania. Her clients portfolio spans a variety of industries, such as consumer goods, retail, financial services, pharmaceuticals, IT&C, telecommunications and a wide array of players active in manufacturing & distribution. Prior to joining Schoenherr (in 2017), Cristiana worked for a national law firm, providing advice on corporate, commercial and competition matters. She graduated from the University of Bucharest, Faculty of Law, Bucharest/Romania (Law Degree, 2012) and the Nicolae Titulescu University, Faculty of Law, Bucharest/Romania (Master's Degree in Financial, Banking and Insurance Law, 2013).

Contact the authors: g.badescu@schoenherr.eu and c.manea@schoenherr.eu

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1. Pre-notification guidance

The Secretariat of the FDI Screening Commission (*Secretariatul Comisiei pentru Examinarea Investițiilor Străine Directe, CEISD*) acts as main point of contact for investors. It operates as an internal unit within the Romanian Competition Council and ensures the proper workflow between the relevant stakeholders involved in the FDI review process.

Investors can seek guidance via the Secretariat of the FDI Screening Commission, prior to the submission of a filing. The authority encourages a pre-filing dialogue in more complex deal structures, and especially in deals involving strategic Romanian targets or assets (in critical sectors such as defence, telecom, banking, energy, oil, gas and other natural resources, pharma). This pro-active approach helps to streamline the review process and manage timing expectations.

Guidance usually covers topics related to the interpretation of the provisions of the national legislation governing the Romanian FDI regime, namely the Emergency Government Ordinance no. 46/2022 and of the Regulation for the organization and functioning of the Commission for the Examination of Foreign Direct Investments. Most notably, guidance is usually sought in relation to the potential nexus, the broad scope of the sensitive sectors, or the allocation of the investment value.

On 11 February 2025, the authority published draft Guidelines aimed at fostering clarity on essential concepts relevant for FDI screening in Romania. To note, one of the biggest challenges when assessing the FDI jurisdictional test has been making a best guess on how to calculate or reverse-engineer the local investment value. The draft Guidelines now clarify that the investment value needs to factor in all funds made available by the investor in the context of a deal, which may include both cash and non-cash consideration (such as assets, shares, debt conversions or relief, services or other in-kind consideration), all assessed at fair

market value. The draft Guidelines also include a breakdown of how the investment value should be calculated for various types of investments.¹

2. Consultation

While the authority does not provide consultation services per se, it usually seeks to be responsive to investor queries through guidance. This can be provided via phone calls, during meetings with officials and/or through formal replies to request letters submitted by potential investors, either directly or through their legal counsel.

Formal replies usually follow a standard format and, although helpful in most instances, investors are nonetheless reminded that it is their own responsibility to perform a self-assessment and determine whether a potential investment can be ultimately caught by the Romanian FDI regime. Formal replies do not substitute a filing or provide legal certainty on a particular investment.

The authority usually encourages investors to submit filings whenever there is uncertainty on the applicability of the Romanian FDI regime. Emergency Government Ordinance no. 46/2022 (the FDI Act) regulates the possibility of the authority to issue a formal non-intervention / non-jurisdiction letter, in cases where, further to a preliminary review, the authority takes the view that the investment does not fall under Romanian FDI rules.

The latest figures from the Romanian Competition Council's 2024 Annual Report² show that, purely from a statistical standpoint, the authority is more inclined to claim jurisdiction and perform the national security screening. In 2024, 471 foreign direct investment reviews were completed, of which 159 cases were finalized through issuing a full-fledged decision (as they concerned non-EU investors). The average duration of a case decreased in 2024 to 2 months, from roughly 2.5 months in the previous year.

¹ For an overview of this breakdown, please see Georgiana Bădescu, Cristiana Manea, Sabina Aionesei, Teodora Burduja (February 2025), *Romania one step closer to secondary FDI legislation*: <https://www.schoenherr.eu/content/romania-one-step-closer-to-secondary-fdi-legislation>

² The 2024 Annual Report of the Romanian Competition Council (April 2025), page 30.

3. Government relations

The use of public affairs and/or lobbying is not typical to support the review of a transaction by the authority, unless the transaction is genuinely in a strategic or critical sector. Nonetheless, to the extent needed, the use of other specialists (e.g., especially in deals that occur in regulated sectors) may prove helpful in Phase 2 cases and/or when potential commitments / remedies need to be considered. To date, the engagement of the FDI authority is usually ensured via the investor's legal counsel, by means of regular meetings and check-in updates with the officials and the case team involved in the review.

Since the entry into force of the FDI regime in 2022, the authority has been a regular presence at a wide number of public events, conferences, etc., in an effort to raise awareness on FDI rules.

This approach seems to be the key direction for 2025 as well. The Competition Council stated in their 2024 Annual Report that it has established a series of priorities in the field of FDI screening. These priorities include improving the regulatory framework, continuing collaboration with international institutions for the exchange of good practices, creating a website of the FDI Screening Commission and the possibility for investors to submit filings via an online platform, as well as cooperating with the European Commission on the new EU Regulation for the screening of foreign investments.

Annex 1: Relevant laws, ordinances, regulatory guidelines

- 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 investments into the Union
- Competition Law no. 21/1996, republished in the Official Gazette of Romania, Part I no. 153 of 26 February 2016, as further amended and supplemented
- Emergency Government Ordinance no. 46/2022 regarding the implementation measures 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 investments into the Union, as well as for amending and supplementing the Competition Law no. 21/1996, as further amended and supplemented
- Decision of the National Defence Council no. 73/2012 on the application of Article 46 para. (9)³ of the Competition Law no. 21/1996, republished, as further amended and supplemented
- Government Decision no. 1326/2022 on the approval of the Regulation for the organization and functioning of the Commission for the Examination of Foreign Direct Investments
- Draft Guidelines issued in application of art. 3 paragraph (5) of Government Emergency Ordinance no. 46/2022 on implementing measures for 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 investments into the Union, and amending and supplementing Competition Law no. 21/1996

Annex 2: Relevant administrative and court cases

There have been no relevant administrative and court cases in Romania.

Annex 3: Relevant literature

- The National Defence Strategy of Romania for 2020-2024, published in the Official Gazette of Romania, Part I no. 574 of 1 July 2020

³ Now renumbered as Article 47 para. (9) of the Competition Law no. 21/1996, republished, as further amended and supplemented.

[https://www.presidency.ro/files/userfiles/Documente/Strategia Nationala de Aparare a Tarii 2020 2024.pdf](https://www.presidency.ro/files/userfiles/Documente/Strategia_Nationala_de_Aparare_a_Tarii_2020_2024.pdf).

- The 2024 Annual Report of the Romanian Competition Council
<https://www.consiliulconcurentei.ro/wp-content/uploads/2025/04/Raport-anual-2024.pdf>.
- Georgiana Bădescu, Cristiana Manea, Sabina Aionesei, Teodora Burduja (February 2025), *Romania one step closer to secondary FDI legislation*
<https://www.schoenherr.eu/content/romania-one-step-closer-to-secondary-fdi-legislation>.

About the CELIS Institute

The CELIS Institute is an independent non-profit, non-partisan research enterprise dedicated to promoting better regulation of foreign investments in the context of security, public order, and competitiveness. It produces expert analysis and fosters a continuous trusting dialogue between policymakers, the investment community, and academics. The CELIS Institute is the leading forum for studying and debating investment screening policy. More about the Institute's activities under www.celis.insitute.

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CELIS Country Reports (hereafter "Report") are produced by leading experts for any European and select non-European jurisdiction following an elaborate model, allowing for comparison and evaluation across jurisdictions. The project's aim is to identify and suggest best practice and to propose a common European (model) law on investment screening.

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