

Unclassified

English - Or. English

11 June 2026

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Working Party No. 3 on Co-operation and Enforcement

National Security Considerations in Competition Enforcement – Note by Romania

23 June 2026

This document reproduces a written contribution from Romania submitted for Item 2 of the 143rd meeting of Working Party 3 on 23 June 2026.

Despina PACHNOU
Email : Despina.Pachnou@oecd.org

JT03589132

Romania

Parallel mandates in an era of economic security: The Romanian experience at the intersection of national security screening and competition enforcement¹

1. National security as a moving concept: from military defence to economic security

1. Historically, national security naturally brought to mind defence, war, weapons, military capabilities and territorial integrity. For a long time, its implications were predominantly — almost instinctively — military. But the evolution of social, economic and technological relations has pushed the concept much further. Today, national security can no longer be understood only through the lens of defence. It also includes economic security, financial stability, fiscal resilience, energy security, technological sovereignty, food and health security, supply-chain continuity, access to critical raw materials, protection of sensitive data, and the resilience of critical infrastructure.

2. And it is fair to assume that the concept will not stop here.

3. National security is one of those concepts that every State relies on, but almost no State defines exhaustively.

4. This is not accidental. Whether a jurisdiction has had an investment screening mechanism for decades, or whether it has only recently introduced one, national security is usually left open-textured. It is deliberately flexible because the risks it is designed to address are themselves evolving over time. They evolve with technology, with geopolitics, with markets, with dependencies, and, ultimately, with the way societies function.

5. In this sense, national security has become broader than initially anticipated. It has moved from the protection of borders and military assets to the protection of the conditions that allow a State and its society to function. This does not mean that everything becomes a national security issue. That would be both legally dangerous and economically inefficient. But it does mean that the line between “pure” economic policy and national security has become much more difficult to draw.

6. This evolution is particularly visible in the field of foreign direct investment screening.

7. FDI screening mechanisms are not new. Some jurisdictions are true veterans in this field. The United States, for example, established CFIUS during the Ford Administration in 1975. France also has a long-standing foreign investment control regime, which has evolved considerably over time. What these examples show is that investment screening has never been a static instrument. Each State has built its own mechanism according to its own perception of risk, its institutional architecture, its strategic sectors, and its understanding of sovereignty and geography.

8. What has changed in recent years is not the existence of FDI screening as such, but the intensity, scope and political relevance of these mechanisms.

¹ Ana Maria Belacurencu, FDI Expert/Competition Inspector, Secretariat of the Romanian FDI Screening Commission

9. The COVID-19 pandemic, Russia's war of aggression against Ukraine, rising geopolitical tensions, the weaponization of economic dependencies and, more recently, the instability in the Middle East have all forced governments to look differently at transactions that, in a calmer world, might have appeared purely commercial. We have been — and still are — confronted with questions of supply-chain resilience, energy control, technological dependency, access to critical inputs, semiconductor capacity, data infrastructure, and even dependency on substances relevant for the production of medicines.

10. All these developments have marked the evolution of investment screening mechanisms, in one form or another.

11. If we look at the European picture in 2019 and compare it with the situation in 2026, the difference is striking. A mechanism that was once present only in a limited number of Member States has become, in a very short period of time, part of the normal institutional landscape of economic security in Europe. This evolution is not a bureaucratic accident. It is the expression of the numerous risks that technological development, strategic dependencies and geopolitical fragmentation now bring into the assessment of foreign investment.

12. In other words, FDI screening has become one of the most visible legal and institutional responses to the expansion of national security into the economic field.

2. From parallel review to a dedicated national security screening process: the Romanian experience

13. Romania's experience illustrates how national security considerations may gradually evolve from an adjacent concern in competition-related procedures into a distinct policy field requiring dedicated institutional and legal tools.

14. Historically, Romania addressed national security concerns in connection with merger control proceedings carried out by the Romanian Competition Council. In both theory and practice, transactions notified to the Competition Authority were also subject to a parallel national security assessment conducted at the level of the Supreme Council of National Defence (CSAT). Where national security concerns were identified, the Competition Authority could not continue its assessment of the transaction. The Romanian Competition Council acted, to a significant extent, as an institutional transmission belt between the transaction and the competent national security authorities.

15. In practical terms, however, this was not an FDI screening mechanism in the real sense of the term.

16. The system reflected an important institutional reflex — namely, the recognition that certain economic transactions may have implications beyond competition concerns. Yet the mechanism lacked many of the elements typically associated with contemporary investment screening frameworks. There was no dedicated procedural architecture allowing for targeted information requests, no clear deadlines, no structured procedural safeguards, no judicial review framework tailored to screening decisions, and no possibility of conditional authorization designed to mitigate identified risks.

17. Put differently, national security review existed, but not as a standalone process.

18. The preparation and subsequent adoption 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* accelerated discussions in Romania concerning the need for a more robust legal architecture. While the Regulation

does not harmonize national screening systems, it established a European framework for co-operation and, importantly, reflected a broader recognition that foreign investment screening had become part of the European economic security architecture.

19. Against this background, Romania opted to establish a dedicated screening framework capable of conducting meaningful substantive assessments, supported by clear procedural rules, institutional responsibilities, and legally predictable outcomes.

20. The result was the establishment, in 2022, of a standalone FDI screening mechanism built around an interinstitutional commission (CEISD), bringing together, at State Secretary level and with voting rights, the most relevant ministries of the Romanian Government. Permanent participants without voting rights include the Romanian Intelligence Service (SRI), the Foreign Intelligence Service (SIE), and the Special Telecommunications Service (STS) and the Romanian Agency for Investment and Foreign Trade (ARICE), ensuring that relevant security expertise is available throughout the screening process.

21. This structure reflects an important practical reality: national security risks linked to investments are rarely one-dimensional. A transaction involving renewable energy infrastructure, for example, may simultaneously raise questions of energy security, cybersecurity, access to sensitive infrastructure, technological dependencies, or resilience concerns. No single institution can credibly assess such risks in isolation. CEISD therefore brings to the table a broad range of expertise, allowing transactions to be examined from multiple angles and ensuring that different dimensions of national security are adequately reflected in the assessment.

22. For this reason, CEISD is supported by an expert working group coordinated by its Secretariat and composed of experts from all participating institutions. Beyond its formal membership, the mechanism also allows for consultation with additional public authorities whenever sector-specific expertise becomes necessary. Experience so far has demonstrated a strong institutional willingness to contribute to what is, ultimately, a shared effort to identify an appropriate balance between preserving Romania's openness to investment while safeguarding national security.

23. In many respects, the Romanian mechanism illustrates a broader reality increasingly visible across jurisdictions: effective national security screening is not the product of a single institution, but of structured interinstitutional cooperation.

3. Competition and National Security: Parallel mandates, not competing mandates

24. The increasing prominence of national security considerations inevitably raises an important institutional question: how should competition enforcement and national security review interact?

25. The Romanian experience suggests that these should not be understood as overlapping mandates, but rather as parallel mandates — distinct in rationale, separate in procedure, but occasionally converging in practice.

26. This distinction matters.

27. Under Romania's current framework, merger control review and FDI screening operate as separate processes running in parallel. Notifications before the Romanian Competition Council and notifications submitted under the FDI screening regime are not legally dependent upon one another.

28. The notification forms are different, the information requested is different, and, perhaps most importantly, the rationale of the assessment itself is fundamentally different.
29. Competition authorities assess market structure, competitive effects, barriers to entry, efficiencies and potential impacts on consumer welfare. National security authorities assess risks to security and public order, strategic vulnerabilities, resilience concerns, sensitive technologies, dependencies and the potential implications of foreign influence over critical assets or capabilities.
30. The two assessments therefore examine transactions from different angles, even if there may, at times, be limited areas of convergence.
31. At the early stages of Romania's screening mechanism, the legal framework provided for a stronger procedural connection between merger control and national security screening. Where CEISD identified risks to national security in the context of an investment, the merger review process could be suspended following formal communication between the authorities.
32. Over time, however, the legal framework evolved and the two assessments ceased to be formally linked in this manner.
33. Yet practice often tells a more nuanced story.
34. In transactions considered sensitive or potentially problematic — particularly where parallel notifications exist before both the Romanian Competition Council and CEISD — institutional practice has generally favoured practical coherence. While no formal legal dependency exists, the Romanian Competition Council may, in practice, await the outcome of the national security assessment before finalizing its own review.
35. This approach reflects neither institutional overlap nor a transfer of mandate. Rather, it reflects institutional prudence.
36. And for good reason.
37. In Romania, an adverse outcome in the FDI screening process is, in practical terms, a deal breaker. Even where a transaction could hypothetically receive clearance from a competition law perspective, parties remain legally prohibited from implementing the transaction absent prior authorization under the national security screening framework. No approval obtained from another public authority can substitute for the absence of national security clearance.
38. Put differently, a transaction considered incompatible with national security cannot lawfully be implemented regardless of whether it satisfies competition law requirements.
39. This illustrates an important point that increasingly deserves attention in broader policy debates: competition law and national security review do not pursue identical objectives and should not be expected to produce identical outcomes.
40. A transaction may be entirely unobjectionable from a competition perspective while simultaneously raising unacceptable national security concerns. Equally, a transaction presenting no discernible national security risks may nonetheless require intervention or remedies from a competition law perspective.
41. For this reason, Romania does not frame national security as a traditional exemption or derogation from competition law. Rather, the two systems coexist through separate mandates and procedures. Where national security concerns arise, they are assessed through dedicated screening mechanisms instead of being absorbed into competition-law balancing exercises.

42. The challenge, therefore, is not to merge these mandates, but to ensure that they function coherently alongside one another.

43. Competition authorities should neither ignore national security considerations nor absorb them into competition analysis. Doing so risks institutional confusion, legal uncertainty and mandate expansion beyond what legal frameworks were originally designed to support.

44. The more sustainable approach is one based on structured coordination, institutional dialogue and clear respect for separate mandates.

45. In this sense, competition and national security should be understood not as competing mandates, but as parallel mandates operating within an increasingly interconnected policy environment.

4. Cross-Sectoral cooperation without mandate confusion

46. A related challenge concerns the way authorities cooperate in practice while preserving confidentiality safeguards and institutional boundaries.

47. As a general principle, information submitted in the context of either competition proceedings or FDI screening is examined strictly for the legal purpose for which it was provided.

48. Transaction documents are not freely circulated across institutions, nor can confidential information be transmitted indiscriminately. Parties submit information for a specific assessment — whether competition-related or national security-related — and procedural safeguards surrounding confidentiality remain essential to preserving trust in the system.

49. At the same time, practical experience has shown that meaningful institutional cooperation remains not only possible, but highly valuable.

50. Over time, CEISD and the Romanian Competition Council have cooperated in specific transactions, allowing cases to benefit from cross-sectoral input whenever necessary. While the underlying legal assessments remain distinct, this institutional dialogue has often proven valuable in helping Romanian authorities formulate coherent and well-informed responses to investors.

51. Importantly, there have been no situations in which the Romanian Competition Council itself identified national security risks through competition enforcement and referred such concerns to the screening authority.

52. The opposite dynamic, however, has occurred on occasion.

53. In specific transactions involving complex market realities, CEISD has sought targeted cooperation from the Romanian Competition Council, particularly where competition-related expertise could contribute to a broader understanding of market structure or strategic dependencies relevant to the national security assessment.

54. The broader lesson is that cooperation does not require institutional overlap. It requires institutional maturity. Authorities may examine the same transaction while asking fundamentally different questions.

55. A competition authority may ask whether a transaction risks increasing market power or reducing effective competition. A national security authority may instead ask

whether the transaction creates strategic vulnerabilities, increases dependency, affects resilience or places critical capabilities under foreign influence.

56. Sometimes these perspectives remain entirely separate. At other times, they partially converge. Convergence, however, should not be mistaken for institutional fusion.

57. To date, the Romanian Competition Council has not identified circumstances in which restrictions of competition or exclusionary conduct posed direct risks to national security. This does not mean such situations cannot emerge in future enforcement practice, particularly in increasingly strategic sectors of the economy.

58. From the perspective of national security screening, however, such concerns may arise more visibly.

59. This is particularly true in transactions involving companies functioning as sole or strategically important suppliers to the Romanian State — including, by way of example, suppliers operating in defence-related sectors. In such circumstances, the concern is not necessarily the investment itself, but rather the possibility of creating unacceptable dependencies or disruptions affecting continuity of supply.

60. In practice, situations of this nature are frequently addressed through conditional authorizations and mitigation measures rather than outright prohibitions. Investors may, for example, be required to maintain supply commitments for a defined period of time, allowing the State sufficient opportunity to identify alternative solutions where necessary.

61. This reflects an increasingly important reality: national security risks do not emerge only through restrictions of competition. More often, they emerge through dependency, concentration of strategic capabilities, vulnerabilities in supply chains, or control over essential infrastructure and services.

5. The importance of institutional discipline: FDI screening should remain a national security tool

62. As national security concepts continue to expand, an increasingly important institutional question inevitably emerges: where should the limits of investment screening lie?

63. The answer matters not only for investors, but also for the legitimacy, predictability and long-term sustainability of screening mechanisms themselves.

64. FDI screening is, at its core, a tool designed to protect national security and public order. It should be used for that purpose — and for that purpose alone.

65. The expansion of national security concerns into areas such as supply-chain resilience, technological dependencies, cybersecurity, energy security or access to critical inputs should not obscure this fundamental principle. Modern threats require modern instruments. Yet the growing sophistication of risks should not transform screening mechanisms into instruments expected to address every economic or regulatory vulnerability faced by the State.

66. There may be situations in which sectoral regulation has proven insufficient, where industrial policy objectives remain unmet, or where certain vulnerabilities emerge because another regulatory authority did not act — or can no longer act effectively. Nevertheless, investment screening should not become a substitute for regulatory shortcomings, nor a corrective mechanism for matters that properly belong elsewhere within the legal or regulatory system.

67. If stretched beyond its intended purpose, screening mechanisms risk gradually becoming something else entirely.
68. Such an evolution may create legal unpredictability, undermine investor confidence, and ultimately weaken trust in the legitimacy of the screening framework itself. More fundamentally, it risks creating tensions within the broader legal order by expanding a national security instrument beyond the limits for which it was originally designed.
69. This is not an argument for a narrow or outdated understanding of national security, of course. On the contrary, contemporary realities require screening authorities to understand increasingly sophisticated forms of vulnerability and strategic dependency.
70. But precisely because FDI screening has become such an important instrument of economic security, its effectiveness depends on institutional discipline, legal clarity and predictability.
71. One of the greatest challenges for mature screening systems is therefore not simply how to identify risks, but how to resist the temptation to transform national security review into an all-purpose policy instrument.
72. This consideration also explains why Romania has not approached national security concerns through broad competition-law exceptions or expansive balancing exercises within competition enforcement itself.
73. Rather than expanding the mandate of competition law to absorb national security concerns, Romania has opted to address such concerns through dedicated institutional channels specifically designed for this purpose.
74. In practical terms, this means that while national security considerations may influence the broader context in which economic transactions are assessed, they are examined through dedicated screening procedures rather than through informal mandate expansion.
75. The distinction may appear subtle, but it matters greatly for legal certainty.

6. International cooperation and the increasingly transnational nature of economic security

76. While decisions concerning national security remain inherently sovereign, the risks underlying such decisions are increasingly transnational.
77. Foreign investment today rarely affects only one jurisdiction. Strategic supply chains, critical technologies, infrastructure dependencies, sensitive data flows and ownership structures frequently span multiple countries simultaneously. As a result, meaningful cooperation among authorities has become increasingly important.
78. In Romania, the Secretariat of CEISD acts as the National Contact Point under Regulation (EU) 2019/452 and plays a significant role in facilitating international engagement and institutional cooperation concerning investment screening matters.
79. This cooperation takes multiple forms.
80. At European Union level, Romania engages extensively with Member States and the European Commission through the cooperation mechanism established under Regulation (EU) 2019/452. This framework has created important opportunities for information sharing, coordination, mutual learning and better understanding of risks affecting multiple jurisdictions.

81. Beyond the European Union, Romania has also developed active engagement with non-EU jurisdictions, particularly with strategic partners sharing similar concerns regarding economic security, resilience and protection of critical sectors.

82. Equally important has been cooperation through international fora and best-practice exchanges. Institutional dialogue with partners, bilateral memoranda of understanding, technical discussions, workshops and exchanges of practical experience have significantly contributed to improving screening methodologies and institutional maturity.

83. Romania has also benefited considerably from cooperation with the OECD, whose work increasingly reflects the growing intersection between economic governance, investment policy and national security considerations.

84. Importantly, these forms of international cooperation take place under the institutional auspices of CEISD and the Romanian FDI screening framework, rather than through the competition authority acting independently in the field of national security.

85. At the same time, future cooperation through networks such as the European Competition Network (ECN) or the International Competition Network (ICN) cannot be excluded where strategic sectors increasingly generate questions lying at the intersection of market dynamics and broader security considerations.

86. In an era defined by interdependence, economic security is increasingly international, even while final decisions remain national.

Bibliography

Legal and Regulatory Sources

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. Official Journal of the European Union, L 79 I, 21 March 2019.

Emergency Government Ordinance No. 46/2022 on measures for the implementation of Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments into the Union and amending and supplementing Competition Law No. 21/1996.

Competition Law No. 21/1996, republished, as subsequently amended and supplemented.

OECD and International Policy Sources

Organisation for Economic Co-operation and Development (OECD), Economic Security in a Changing World: New Approaches to Economic Challenges. OECD Publishing, Paris, 2025. https://www.oecd.org/en/publications/economic-security-in-a-changing-world_4eac89c7-en.html

European Commission, Annual Reports on the Screening of Foreign Direct Investments into the Union, various years.

Kokkoris, I. Merger Control, National Security, and Foreign Direct Investment Screening: A Comparative Perspective