

The Legal Regime of Foreign Investment in the Romanian Technology Sector: A Comparative Study

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Abstract

Foreign direct investment (FDI) in the technology sector is a strategic component of sustainable economic development in Central and Eastern Europe, particularly in Romania, a country at the intersection of booming digital potential and the requirements of European regulation. The study analyses the legal regime applicable to foreign investment in technology in Romania, drawing on primary and secondary legislation and investment treaties, as well as screening and authorisation mechanisms recently put in place against the backdrop of the European Union's economic security regulations (Regulation – EU – 2019/452). The paper uses a comparative method by examining similar regimes in Germany, Hungary and Bulgaria, highlighting convergences as well as national particularities. In addition to the normative analysis, the study also explores relevant case law and recent doctrinal opinions in order to assess the concrete impact of the legal regime on attracting investment and protecting the public interest. The conclusions aim to formulate public policy recommendations by balancing the need for economic openness with the imperatives of technological sovereignty and national security.

Keywords: foreign direct investment, technology sector, Romania, economic security, legal regime.

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1. Introduction

Foreign direct investment (FDI) is today the centrepiece for economic growth and innovation in Romania and the European Union. In particular, the technology sector attracts significant capital due to its potential to generate high economic progress and highly specialised digital skills. On the other hand, considerations of national security and public interest, as in any other country, lead the authorities to regulate these investments more carefully, adopting strict authorisation and screening mechanisms².

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² Ilias Alami, "Foreign Investment Screening Mechanisms and Emergent Geographies of (Post) Globalization," *Dialogues in Human Geography* 0, no. 0 (2024), <https://doi.org/10.1177/20438206241278733>. Also see Patricia Accaoui Lorfing, "Screening of Foreign Direct Investment and the States' Security Interests in Light of the OECD, UNCTAD and Other International Guidelines." In Catharine Titi (ed.), *Public Actors in International Investment Law. European Yearbook of International Economic Law*. Cham: Springer, 2021, pp. 179–199, https://doi.org/10.1007/978-3-030-58916-5_10.

Romania has set up a national foreign investment screening regime in accordance with Regulation (EU) 2019/452 on foreign direct investment screening³. The present study comprehensively analyses this legal regime in Romania and compares the solutions with those in Hungary, Germany and Bulgaria, highlighting key similarities and differences.

But to what extent does the legal regime support or hinder investment? Is Romania in step with European and international trends on economic security and investment transparency? How does it compare with its regional neighbours, such as Hungary, Bulgaria and Germany, in terms of protecting and attracting foreign capital in technology? The present study provides a systematic answer to these questions, taking into account normative analysis with a comparative perspective, in order to make a balanced assessment between economic openness and the protection of national interest.

2. National Legislative Regime of Foreign Investments

At the national level, the regulations have not undergone stormy changes in the last 20 years, and foreign investors are subject to general private law regulations, such as the Companies Act, in parallel with special provisions on foreign investment. Law no. 35/1991 on the promotion and registration of foreign investments defined ‘foreign investment’ and established investment freedom in Romania⁴. According to this law, foreign investments can be made in all sectors of the economy (including R&D and technology), provided they do not jeopardise national security, the environment, public order or health publiclegislatie.just.ro. Thus, the technology sector (scientific research, technological development) is explicitly targeted as an area open to foreign investment. By foreign investors is meant natural persons or legal entities domiciled or, as the case may be, established abroad, which invest in Romania, in any of the ways provided for by this law. More specifically, Article 4. of the law states that foreign investments may be made in all sectors of industry, exploration and exploitation of natural resources, agriculture, infrastructure and communications, civil and industrial construction, scientific research and technological development, trade, transport, tourism, banking and insurance services and other services, subject to the following conditions: a) they do not violate the rules for the protection of the environment; b) they do not harm Romania’s national security and defence interests; and c) they do not harm public order, health and morality. The normative act aligns with the protection standards of the treaties by guaranteeing that foreign investments in Romania may not be nationalised, expropriated, requisitioned or subject to other measures with similar effects, except in cases of public interest, in compliance with the procedure provided by law and with the payment of compensation corresponding to the value of the investment, which must be prompt,

³ European Union. 2019. 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 79I. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R0452>. See the Emergency Ordinance of the Government of Romania no. 46 of 14 April 2022 on Measures Implementing 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. Official Gazette No. 368/2022. Accessed July 19, 2025. <https://investmentpolicy.unctad.org/investment-laws/laws/526/romania-emergency-ordinance-no-46>.

⁴ Parliament of Romania. 1993. Law No. 35/1991 on Foreign Investment Regime. Republished in the Official Journal of Romania, Part I, No. 185/1993. Repealed by Emergency Ordinance No 31/1997.

adequate and effective.⁵

The provisions of the old regulations have been taken over by the normative act in force at this date⁶. Currently Article 4 of Emergency Ordinance No 92/1997 provides that: '(1). The making of an investment in Romania, as well as the possession, use or disposal of a property, shall be guaranteed and may not be subject to any discriminatory measure. Likewise, the administration, maintenance, fruition, expansion or liquidation of an investment may not be subject to discrimination. (2) Investors in Romania shall benefit, in particular, from:

- the possibility of investing in any field and in any legal form provided by law;
- equality of treatment – fair and equitable – for Romanian or foreign investors, resident or non-resident in Romania;
- guarantees against nationalisation, expropriation or other measures with equivalent effect.

These guarantees represent a positive aspect, especially in the context of the decline of bilateral investment treaties.

Therefore, the Romanian state provides foreign investors with solid protection guarantees: investments cannot be nationalised or expropriated except for reasons of public interest, with prompt and fair compensation of the value of the investment. Foreign investors have the right to participate in the management and administration of the entities in which they invest and to transfer abroad, without unjustified restrictions, the profits realised. These guarantees are reinforced by Emergency Ordinance No. 92/1997 (approved with amendments by Law No. 241/1998), which reaffirms the right of investors to free management of their investment, protection against expropriation and full repatriation of capital and profits⁷. Overall, the national legislation provides foreign investors with a regime of equal treatment with local investors, with no special capital ceilings (apart from those imposed by sectoral regulations), and guarantees of non-discrimination.

There are, however, specific conditions and restrictions for regulated sectors: banking, telecommunications, energy, insurance, transport or essential infrastructure requiring special authorisations and operating licences. In the field of real estate, the legislation has been harmonised with the *acquis communautaire* because after EU accession, citizens and companies from EU Member States can acquire agricultural land and real estate in Romania under the same conditions as national residents. The Romanian legal regime is geared towards incentivising FDI (including in the technology sector), guaranteeing the security of investments, but preserving the legal regime necessary to protect public interests and national security. Pursuant to Regulation (EU) 2019/452, Romania has implemented a national framework for the screening of foreign direct investments through Emergency Ordinance No. 46/2022, establishing the Commission for the Examination of Foreign Direct Investments (CEISD) – a collegiate body under the authority of the Romanian Government. CEISD also has powers under

⁵ Government of Romania. 1997. Emergency Ordinance No 31/1997 on foreign investment in Romania. Official Gazette of Romania, Part I, No 125/1997. Repealed by Emergency Ordinance No. 92/1997.

⁶ Government of Romania. 1997. Emergency Ordinance No 92/1997 on the stimulation of direct investments. Official Gazette of Romania, Part I, No. 386/1997.

⁷ Stoica & Asociații. 2024. 'In Brief: Regulation of Inbound Foreign Investment in Romania.' Lexology, October 16. <https://www.lexology.com/library/detail.aspx?g=d52d6b3d-163f-4a9e-b766-3e91c7acb17c>. Accessed July 19, 2025.

GEO 108/2023.

As of February 2023, the Romanian Agency for Investment and Foreign Trade, directly subordinated to the Prime Minister, is also operating. Its role is to attract direct and portfolio investments, to promote foreign trade (including Romanian tourism services) and to monitor Romanian investments abroad. The Agency took over the tasks of the former Ministry of Entrepreneurship and Tourism.

As regards disputes with foreign investors, the State is represented by the Ministry of Public Finance before national courts, unless otherwise provided by law. Before ICSID arbitral tribunals, the State is represented by the public institution that managed the domain involved in the dispute. If several authorities were involved, the Government determines the competent institution.⁸

ARICE, established on the recommendation of the OECD, has a central role in Romania's accession to the OECD in the areas of investment and sustainable development, representing Romania in the OECD Investment Committee and the Working Party on Responsible Business Conduct (WPRBC), coordinating the National Contact Point (NCP) for Responsible Business Conduct and implementing the OECD recommendations in this field. The OECD accession process involved three key assessments (2023–2024), followed by 24 structural recommendations received in 2024 and 2025. In terms of NCP officials, ARICE has the legal responsibility (HG No 1430/2024) for the operation of the NCP, with the ARICE president also being the chair of the NCP. Among the achievements in the first half of 2025 is the creation of a legal framework compatible with OECD standards; the formation of the Advisory Committee and the adoption of the operating regulations; the approval of the 2025 Promotion Plan; the launch of the digital portal pnc-rbc.gov.ro, currently under final testing; and the annual promotion plan adopting a SMART vision, aiming to transform the NCP into a 'national hub of knowledge and dialogue' for responsible business conduct (RBC).

ARICE's strategic contributions to the OECD: the National Strategy for Responsible Business Conduct (2025–2030) – at the time of writing in consultation, aims to implement risk-based due diligence and ESG reporting by large companies; the National Strategy for Attracting Foreign Investment – in drafting, emphasising investment quality and sectoral priorities; and the National Export Promotion Strategy – in drafting, linking public support to ESG criteria.⁹

2.1. Between European Compliance and National Adaptation

The transition from a purely promotional model, dominant in the 1990s, to one predominantly based on screening and national security control reflects an institutional maturation and strategic alignment with EU priorities. The cornerstone of this new regime is the Government's Emergency Ordinance No. 46/2022, which transposes into

⁸ See details on the Romanian Agency for Investment and Foreign Trade (ARICE) website. 2025. *About us*. Accessed 19 July 2025. <https://arice.gov.ro/1/>. As regards the ARICE website, we criticise the fact that there is no section dedicated to Romanian legislation in the field of foreign investments, with the necessary explanations, which creates a high dependence on foreign investors on specialised legal advice.

⁹ Romanian Agency for Investments and Foreign Trade (ARICE), *Investor's Handbook*. Bucharest: ARICE, 2024. Accessed 19 July 2025. <https://arice.gov.ro/1/wp-content/uploads/2024/06/Caietul-Investitorului-04.06.2024-en.pdf>.

national law Regulation (EU) 2019/452 of the European Parliament and of the Council¹⁰. This ordinance established the Commission for the Examination of Foreign Direct Investments (CEISD), a collegiate body under the authority of the Romanian Government, but functionally autonomous, which is responsible for examining investments from the perspective of affecting public order and national security.

Subsequently, by Emergency Ordinance No. 108/2023¹¹, the competences of the CEISD were extended, reinforcing the prior vetting regime for FDI and clarifying the delimitation between notifiable and exempt investments. Romania is thus aligning itself with similar European FDI screening systems modelled on the French, German and Italian models.

At the same time, the direct investment promotion regime is based on Emergency Ordinance No. 92/1997, which is still in force in the parts that have not been suspended or repealed. Although it was conceived in a post-transition context, with an emphasis on tax incentives and administrative facilities, this ordinance retains a certain relevance in terms of the support framework, being maintained for reasons of continuity rather than doctrinal topicality. A notable development was also the establishment, in 2023, of the Romanian Agency for Investment and Foreign Trade (ARICE), an institution that took over the functions of the former Ministry of Entrepreneurship and Tourism. As mentioned above, ARICE has an exclusive role of promotion and facilitation, not being involved in the actual screening of FDI. However, through its investment attraction policies and the publication of guidance documents such as the Investor's Guide, ARICE indirectly contributes to strengthening the transparency of the Romanian investment climate, which is why it should pay particular attention to presenting as detailed as possible legislative information on its website.

It can be said that the current legal regime for foreign direct investment in Romania is made up of a dual system: on the one hand, screening and protection mechanisms, reinforced by legislation through GEO. no. 46/2022 and GEO. no. 108/2023; on the other hand, promotion measures still partly governed by post-communist regulations. The coexistence of old and new illustrates Romania's transition towards a mature, European and selective investment model, but is still subject to rules that need to be constantly adapted.

3. The European Legislative Regime

At the EU level, foreign investment is governed by internal market principles, which ensure the free movement of capital. Thus, Art. 63–66 TFEU prohibits general restrictions on the movement of capital between Member States and between Member States and third countries, with exemptions allowed only for imperative reasons of national security or foreign policy (among others). In this context, Regulation (EU) 2019/452 has established a coordinated screening regime for foreign investments

¹⁰ Government of Romania, Emergency Ordinance No. 46 of 14 April 2022 on measures implementing 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 investment in the Union and amending and supplementing Competition Law No. 21/1996, Official Gazette of Romania, Part I, No. 379 of 18 April 2022.

¹¹ Government of Romania. Emergency Ordinance No. 108 of 29 November 2023 amending and supplementing Competition Law No. 21/1996, as well as other normative acts. Official Gazette of Romania, Part I, No. 1100 of 6 December 2023.

impacting on the essential interests of the Union¹². The Regulation lists critical areas warranting investment screening: strategic physical and digital infrastructure, advanced technologies and dual-use goods (e.g. artificial intelligence, robotics, biotechnology, renewable energy), energy resources and vital raw materials, food security, access to sensitive data and media pluralism. Member States must designate national authorities to assess foreign investments and notify the European Commission and other Member States of transactions that could affect collective security. In cross-border cases, the Commission is competent to issue advisory opinions if it considers that foreign investment threatens the security of the Union¹³. Broadly, EU legislation and case law emphasise the balance between encouraging FDI and protecting public interests: while foreign capital is free for European investors, additional screening conditions may be imposed for strategic risk investments.

3.1. Investment Screening and Authorisation Regime

In Romania, foreign investors must comply with both regular economic regulations and special national security screening mechanisms. Until 2022, the main role rested with the Supreme Council for National Defence (CSAT), which had identified by Decision No 73/2012 economic sectors of strategic interest (defence, energy, communications, etc.) where mergers or acquisitions were reviewed from a security perspective. Following EU Regulation 2019/452, the Commission for the Examination of Foreign Investments (CEISD) was set up by Emergency Ordinance No. 46/2022, according to which any foreign investment targeting activities considered strategic by the CSAT and exceeding a threshold of EUR 2 million must be authorised in advance. More specifically, Article 3 of GEO 46/2022 stipulates that FDI targeting the sectors listed in Decision 73/2012 and exceeding this threshold is subject to screening. At the same time, the authorities may also require screening of investments below the threshold if there are indications that they may jeopardise national security or public order. The authorisation process involves a two-stage analysis: a preliminary stage (screening) and, if necessary, a detailed security investigation, with deadlines expressly set out in the ordinance. Until a favourable decision is obtained (), the investor is obliged to standstill (suspension of the transaction), failure to comply with this obligation being sanctioned by the nullity of the transaction or fines. In practice, the CEISD grants authorisations may impose conditions (e.g. security concessions) or may refuse the transaction if it is considered dangerous for Romania.¹⁴

For Hungary, the FDI regime has also been extensively revised in recent years. Act LVII/2018 (effective from December 2021) requires notification for acquisitions by

¹² European Parliament and Council of the European Union, Regulation (EU) 2019/452 of 19 March 2019, establishing a framework for the examination of foreign direct investment in the Union, Official Journal of the European Union, L 79I, 21 March 2019, pp. 1–14. Accessed 19 July 2025. <http://data.europa.eu/eli/reg/2019/452/oj>. <http://data.europa.eu/eli/reg/2019/452/oj>.

¹³ The pandemic period launched some measures that affected infestations and their course. For more details see Bian, Cheng. 2023. 'Investment Screening Put to the Test of the Covid-19 Pandemic: Typology, Legality and Externality.' *Asia Pacific Law Review* 31 (2): 380–401. doi:10.1080/10192557.2023.2181784.

¹⁴ For a comparative view, see Doppen, Floor, Antonio Calcara, and Dirk De Bièvre. 2024. 'Balancing Security and Economics: Domestic State-Firm Relations and Investment Screening Mechanisms in Europe.' *Review of International Political Economy* 31 (6): 1637–61. doi:10.1080/09692290.2024.2368601.

foreign investors in sensitive sectors (defence, energy, agriculture, etc.) exceeding the threshold of 25% of voting rights (and 10% for listed companies). There are also anti-collusion provisions: cumulative holdings by foreign investors exceeding 25% trigger the screening obligation¹⁵. But a recent extremely stringent mechanism (Government Decree No. 163/2025) expands state control and introduces the government's right of pre-emption in all notified transactions, allowing the state to take over any Hungarian company sold to foreigners if 'national interests' so require. In practice, Hungary has thus tightened its control over foreign investment, making foreign acquisitions a strictly supervised process, and the 2025 announcement signals a hostile policy towards foreign capital, especially if it is deemed vulnerable to geopolitical factors.

In Germany, FDI screening is well developed¹⁶. The Foreign Law (Außenwirtschaftsgesetz - AWG and the AWV Regulation) provides for notification obligations for acquisitions by non-EU/EFTA investors reaching variable thresholds¹⁷. In particular, any non-EU investor acquiring a 25% stake in the voting rights of a German company is subject to government scrutiny¹⁸. In sectors considered critical (defence, cryptotech), the threshold is 10% held by a foreign buyer. For other strategic sectors (energy, telecoms, pharmaceuticals, advanced technologies such as AI, robotics, semiconductors, cyber, etc.), notification thresholds are typically 10% in the most sensitive sectors and 20% in others. Of note, in Germany there is a strong focus on 'key technologies' and the low thresholds reflect a proactive policy—for example, acquisitions in important high-tech sectors trigger special reviews. The German regime also imposes standstill obligations before authorisation. Therefore, compared to Romania, Germany has a more granular system, explicitly covering high-end technologies and multiple infrastructure, but practices are transparent and well foreshadowed by legislation.

Bulgaria is the country where the screening mechanism was recently introduced in the context of adapting to EU rules. In March 2024, the Bulgarian Parliament amended the Investment Promotion Act (IPA) to create an Interdepartmental FDI Screening Council under the coordination of the Government¹⁹. According to these amendments, foreign investments impacting critical sectors (as listed in Art.4 of the EU Regulation) must be notified if they fulfil the following cumulative conditions: acquisition of at least 10% of the capital of a Bulgarian company *and/or* a new investment exceeding

¹⁵ See Hungary, Act LVII of 2018 on the Control of Foreign Investments Detrimental to the Security Interests of Hungary, effective 1 December 2021. Accessed July 19, 2025. <https://investmentpolicy.unctad.org/investment-laws/laws/533/hungary-act-lvii-of-2018-on-the-control-of-foreign-investments-detrimental-to-the-security-interests>.

¹⁶ Michael Jürgen Werner, Sabine Holinde. *Germany: Global Rules on Foreign Direct Investment*. Norton Rose Fulbright, June 2024. Accessed July 19, 2025. <https://www.nortonrosefulbright.com/en/knowledge/publications/f5b8d5d0/germany>.

¹⁷ Having a broader regulatory object, for all foreign trade, see Bundesministerium der Justiz, *Gesetz über die Außenwirtschaft (Außenwirtschaftsgesetz - AWG)*, BGBl. I S. 148, zuletzt geändert am 3. Juni 2024. Accessed July 19, 2025. https://www.gesetze-im-internet.de/awg_2013/.

¹⁸ Marius Boewe, „Germany: Trends Emerging from Established National FDI Regime”, *Global Competition Review*, November 25, 2024. Accessed July 19, 2025. <https://globalcompetitionreview.com/hub/fdi-regulation-hub/fourth-edition/article/germany-trends-emerging-established-national-fdi-regime>.

¹⁹ Kristian Nemtsov, 'Bulgaria with a Mechanism for Screening of Foreign Direct Investments,' Deloitte, accessed July 14, 2025, <https://www.deloitte.com/cc/en/related-content/bg-foreign-investment-screening-mechanism.html>.

EUR 2 million; also the acquisition of 10% of "high-tech" entities triggers screening even below the value threshold. Also, any investment in critical energy sectors or made by an investor from Russia or Belarus is automatically scrutinised. These rules are gradually coming into force (expected to be effective from 2025) and are modelled on the European regime, with prior notification and authorisation. A central element of this mechanism is the establishment of an Interdepartmental Council for Foreign Direct Investment Screening, under the coordination of the Bulgarian Government. The Council is a permanent collective body which examines applications for foreign direct investment and can approve, reject or conditionally authorise investments, in accordance with the criteria set by the IPA and the EU Regulations. The Council's decisions are individual administrative acts and can be appealed against under the Bulgarian Administrative Procedure Code.

In order to make a foreign direct investment in Bulgaria, investors must submit an application through the Bulgarian Investment Agency, which will be forwarded to the interdepartmental council. The Council is obliged to adopt a decision within 45 days of receipt of the complete application, with the possibility of an extension of up to 30 days²⁰. Compared to Romania, Bulgaria has started screening from scratch, taking over the EU criteria and setting thresholds (10%, EUR 2 million) close to the Romanian ones, but the actual institutionalisation of the mechanism is still being implemented.

4. Investor Protection and Guarantees

In Romania, foreign investors are protected both domestically and through international instruments. Current regulations and related rules guarantee that the state will not institutionalise nationalisation or expropriation-type measures without public justification and adequate compensation, as detailed in the country presentation made at the beginning of this paper. Ownership of capital and profits can be freely transferred in foreign currency. Ordinance 92/1997 repeats these safeguards even further, guaranteeing investors the right to free management of investment and unrestricted repatriation of gains. In practice, these provisions protect investors against arbitrary state action or retroactive changes to the tax and regulatory regime.

At the international level, Romania is a party to the ICSID Convention (with many ICSID arbitration with Romania as a party) and has concluded numerous bilateral investment treaties (BITs) with third countries (e.g. a BIT with the United States since 1992, as well as agreements with Arab and Asian countries)²¹. The treaties provide for standards of protection (fair and equitable treatment, national, non-discriminatory treatment, prohibition of arbitrary expropriation, etc.) and mechanisms for settlement through international arbitration. As a member of the EU, Romania also applies internal market principles: investors from EU Member States are guaranteed free movement of capital and equal treatment and are not subject to discrimination based on nationality. CJEU case law (e.g. *Achmea v. Slovakia*) has ruled that arbitration clauses in intra-EU

²⁰ See procedure in the National Assembly of Bulgaria. *Investment Promotion Act*, Title amended, SG 37/2004. Accessed July 10, 2025. <https://investmentpolicy.unctad.org/investment-laws/laws/433/bulgaria-investment-promotion-act->.

²¹ Berinde, Mihai, Dana Petrica, and Liana Mester. 'ICSID Cases in Which Romania Has Been Involved.' *Annals of the Faculty of Economics*, University of Oradea 1, no. 1 (July 2019): 247–252. Accessed July 19, 2025. <https://anale.steconomeiceuoradea.ro/volume/2019/n1/024.pdf>.

BITs are null and void, as contrary to the EU Treaty. Romania has reacted to this development by denouncing all BITs with EU states, recognising that EU law already provides equivalent protection for European investors²². Foreign investors therefore benefit, on the one hand, from the EU regime (necessary, for example, for the freedom of capital) and, on the other hand, can invoke guarantees offered by third states or international arbitrations concluded before EU accession.

4.1. Relevant International Treaties

An important aspect is investment treaties. Romania has, over the years, signed numerous bilateral investment treaties (BITs) with third countries to protect its foreign investors and vice versa. For example, the Romania-US Treaty (signed in 1992) establishes reciprocal investment protection guarantees, including national treatment and international arbitration clauses. After EU accession and with the entry into force of the CJEU decisions, Romania denounced its intra-EU BITs (which affected 22 such agreements) on the grounds that EU law and the TEU already provide equal protection to EU investors²³. In contrast, treaties with non-EU countries remain valid and provide investors recourse to arbitration (ICSID, UNCITRAL) in case of disputes. Romania also participates in multilateral mechanisms (e.g. ICSID Convention and UNCITRAL Facilities) and informs UNCTAD about its investment agreements. Also, as an EU and NATO state, Romania implements OECD recommendations on transparency and investor dialogue, and in certain areas of technology also applies third party regulations (e.g. EU agreements on technology transfer, data protection – GDPR – or specific telecom rules).

4.2. Relevant Case Law

At the national level, there is very little direct case law on foreign investment, as investments usually raise issues of contract, insolvency or taxation, which are dealt with by the common Romanian courts. More relevant are international cases. Investors have used international tribunals for disputes with the Romanian state, invoking BITs and the ICSID Convention. Among the most well-known arbitration decisions are *Rompetrol v. Romania*²⁴, *S&T Oil Equipment & Machinery Ltd. v. Romania*²⁵, *EDF*

²² Baltag, Crina. 'Green Light for Romania to Terminate its Intra-EU Bilateral Investment Treaties.' *Wolters Kluwer Arbitration Blog*, March 14, 2017. <https://legalblogs.wolterskluwer.com/arbitration-blog/green-light-for-romania-to-terminate-its-intra-eu-bilateral-investment-treaties/#:~:text=%3E%20Eventually%2C%20all%20intra,182>.

²³ Popa Tache, Cristina-Elena. 'Diverging Opinions on the Agreement on the Termination of Bilateral Investment Treaties Between EU Member States / Opinii Divergente pe Marginea Acordul privind Încetarea Tratatelor Bilaterale de Investiții dintre Statele Membre ale Uniunii Europene.' *Revista Universul Juridic*, no. 3 (2022). See also Popa Tache, Cristina-Elena. *Introduction to International Investment Law*. Bucharest: ADJURIS International Academic Publisher, 2020. E-book. ISBN 978-606-94978-2-1. Accessed July 12, 2025. <https://adjuris.ro/introduction-to-international-investment-law/>. <https://adjuris.ro/introduction-to-international-investment-law/>.

²⁴ *Rompetrol Group N.V. v. Romania*, ICSID Case No. ARB/06/3, Award, May 6, 2013.

²⁵ *S&T Oil Equipment & Machinery Ltd. v. Romania* (ICSID Case No. ARB/07/13).

(Services) Limited v. Romania²⁶, Roussalis v. Romania²⁷, Petrochemical Holding GmbH v. Romania²⁸ or Gabriel Resources v. Romania where the enforceability of contracts between the state and the investors was discussed²⁹. Although we will not elaborate on these judgements here, they emphasise the importance of protective clauses offered to foreign investors.

At the European level, several Court of Justice decisions have influenced the field of investment. Such is the CJEU decision *Achmea (Komstroy) (Komstroy)* (2018),³⁰ which established the incompatibility of arbitration clauses in intra-EU BITs with EU law, leading to the winding up of arbitration protection between Member States. Also, EU case law on capital (e.g. *Angonese* cases on free access to employment for EU citizens) holds that unjustified restrictions on foreign capital are prohibited. International treaties and decisions of international courts therefore have a direct impact on foreign investors in Romania, as they may influence the protection regime and dispute settlement mechanisms (e.g. the possibility of holding the Romanian state liable before international tribunals on the basis of BITs concluded).

5. Summary of Comparative Similarities and Differences with Hungary, Germany and Bulgaria

5.1. Screening and authorisation

Romania and the other countries analysed have investment screening mechanisms, but the differences help us to understand the whole mechanism. Romania operates an intermediate system: moderate thresholds (EUR 2 million, in security sectors) and a centralised body (CEISD) that can recommend conditions. Hungary has a much more restrictive regime: ownership limits of only 25% (or 10% in listed companies) and an authority (ministry) that can block transactions on grounds of ‘national interest’; the new state pre-emption right (2025) escalates control to the highest level. Germany applies technically detailed rules, with sectoral and cross-sectoral thresholds (e.g. 10%, 20%, 25%) and a duplex screening mechanism (preliminary screening + investigation)³¹. In Germany, the notions of ‘public security’ and ‘critical infrastructure’ are clearly defined, and policies extend screening to advanced technologies. Bulgaria is only just building its mechanism on the EU model: it has taken over the criteria of Regulation 2019/452 and set similar thresholds to the Romanian ones ($\geq 10\%$, $> \text{EUR } 2 \text{ million}$) for the decision to authorise the investment.

In terms of authorisation, the Romanian procedure involves governmental analyses with precise deadlines, similar to the German-European process. Hungary, on the other hand, has granted the state exceptional blocking or compulsory acquisition

²⁶ EDF (Services) Limited v. Romania (ICSID Case No. ARB/05/13).

²⁷ Roussalis v. Romania (ICSID Case No. ARB/06/1).

²⁸ G Petrochemical Holding GmbH v. Romania (ICSID Case No. ARB/19/21) Gabriel Resources Ltd. and Gabriel Resources (Jersey) v. Romania, ICSID Case No. ARB/15/31, Award of the Tribunal, March 8, 2024.

²⁹ Gabriel Resources Ltd. and Gabriel Resources (Jersey) v. Romania (ICSID Case No. ARB/15/31).

³⁰ Court of Justice of the European Union (CJEU), *Slovak Republic v. Achmea BV*, C-284/16, Judgment of the Court of 6 March 2018. Accessed 19 July 2025. https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A62016CJ0284_4.

³¹ Marius Boewe, *op. cit.*, 2024.

powers, which implicitly discourages foreign investors. Bulgaria, in the initial phase, is following our model, but it comes into force later and its practical effectiveness remains to be seen.

5.2. Investor Protection

All these countries respect investor protection standards, but the national context varies. Romania and Germany guarantee 'on paper' clear legal treatment, property rights and arbitration for disputes (through BITs or the EU), and expropriations are allowed strictly with legal compensation. Hungary, although party to the same conventions, has shown reluctance with new laws (low permissiveness towards foreign capital). Bulgaria is now building its system, but EU membership guarantees its basic principles (freedom of capital).

A common aspect is that all four have signed international conventions and are members of ICSID (except insensitive, but all are party), which makes them exposed to investors through international tribunals. Unlike Romania, Germany has a few BITs (often replacing them with EU law), and Hungary, similarly, has revised its BIT policy. Romania, for its part, has denounced its BITs with EU states, recognising the Union's implicit protection.

5.3. Case Law

By comparison, Romania and Bulgaria do not yet have significant domestic jurisprudence on foreign investors, with international arbitrations playing the main role. Germany has the case law of higher courts on the application of the AWG (e.g. approaches in minority shareholding cases) and decisions of the Constitutional Court on economic freedom and security. Hungary has had domestic political decisions, but from a legal point of view, the key decisions are still of international tribunals (e.g. investors vs. the Hungarian state)³². A distinctive element is the case law of the CJEU and other fora, which affects the application of investment treaties between Member States in all these countries: for example, the *Achmea* judgement is relevant for Romania, Germany and Bulgaria, but Hungary (not being a Eurosceptic state) has partly removed its repercussions through its own national restrictive legislation³³.

6. Conclusions

The legal regime for foreign investment in the technology sector in Romania combines openness to capital with careful control to protect the public interest. The national regime (Law 35/1991, OUG 92/1997 and other acts) guarantees investors cardinal rights (freedom of management, profit repatriation, compensation for expropriation) and general access to all economic sectors, technology being explicitly

³² Dimitry Vladimirovich Kochenov & Nikos Lavranos, „Achmea versus the Rule of Law: CJEU's Dogmatic Dismissal of Investors' Rights in Backsliding Member States of the European Union”. *Hague Journal on the Rule Law* 14, 195–219 (2022). <https://doi.org/10.1007/s40803-021-00153-7>.

³³ Mélida Hodgson, Edeli Rivera, „UP and CD Holding Internationale v Hungary: Achmea is Not the End of Intra-EU ICSID Arbitration”, *ICSID Review - Foreign Investment Law Journal*, Volume 35, Issue 1-2, Winter/Spring 2020, pp. 197–205, <https://doi.org/10.1093/icsidreview/siaa019>.

included among the areas open to investment. On the other hand, with the implementation of Regulation (EU) 2019/452 (OUG 46/2022), a formal screening mechanism requiring prior authorisation for large strategic investments was introduced. This approach puts Romania in the middle: moderate thresholds (€2m) and security criteria generally allow investor access, but maintain state control where it is judged necessary. We have seen Hungary opt for much more drastic measures because, beyond any screening, the state reserved the right to take over sensitive companies sold to foreigners. This is indicative of a restrictive investment climate, even if it formally complies with EU standards on free movement. Germany, on the other hand, has a stable and transparent system with clear sectoral filters and thresholds (including high-tech), which gives predictability to investors. Bulgaria is only just implementing the EU screening mechanism and will basically apply the same criteria as Romania (in particular for strategic investments and investments above €2 million) but practical experience and effectiveness will remain to be monitored in the coming years.

Although all four countries have integrated the basic EU regulations, their application differs. Romania and Bulgaria, as newer members of the EU, maintain a fairly friendly regime, while emphasising security. Germany emphasises technical detail and caution, while Hungary has chosen a nationalist line with strong state interference. From the perspective of foreign investors in technology, the conclusion is that, although Eastern Europe provides facilities and opportunities (talent, costs, market), regulatory risks have to be taken into account: in all cases mentioned, investors would be wise to check local screening requirements and to ensure their protection (through investment structures, political risk insurance or international arbitration) before starting major projects. Further, it is recommended to monitor legislative updates (such as OUG 108/2023 in Romania) and work closely with local advisors.

For the tech investor, this regional legal environment as an administrative rule is a testament to how nations design their future. Eastern Europe, with its rising talent and competitive costs, looks like a fertile investment project for innovation, but at the same time an area where political and regulatory risks cannot be neglected. Prudence becomes the supreme virtue through well-thought-out investment structures, political risk insurance and international arbitration that become instruments of survival and prosperity. The protection of the public interest, sometimes seen as a barrier, is, in fact, an expression of collective responsibility, a reflection of a state conscience that realises that technology, although emancipatory, can also be undermining if not managed with discernment.

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