

WHEN THE PROTECTION OF STATE SECURITY BECOMES A GENERAL MECHANISM OF CONTROL OVER THE ECONOMY

The Civic Movement “Construim Încredere” draws attention to the way in which Law No. 174/2021 and Government Decision No. 437/2025 have created a mechanism with extensive powers over the business environment, moving away from the logic of European legislation and raising serious concerns regarding legality, transparency, proportionality and integrity.

Protecting critical infrastructure, communications, energy, transport, sensitive technologies and other strategic sectors is a natural duty of the state. No modern economy can ignore the risk that investments may be used to take control of essential infrastructure, gain access to sensitive data or advance the interests of foreign powers.

The issue, therefore, is not whether the Republic of Moldova should screen investments that may threaten state security. The issue is how this control is designed, whom it applies to and what safeguards exist against arbitrariness.

An analysis of Law No. 174/2021 and Government Decision No. 437/2025 shows that the national mechanism has gone beyond the limits of targeted foreign investment screening. Through its very broad scope, mandatory prior approval, the possibility of reopening already approved investments, severe sanctions and reduced transparency, it has acquired the characteristics of a general administrative authorisation regime covering significant segments of the economy.

Moreover, the regulation approved by the Government contains measures and powers that do not derive sufficiently clearly from the law and may directly affect property rights, corporate governance, the right to dividends and the continuity of economic activity.

From foreign investment to the control of one's own citizens

Law No. 174/2021 states that it partially transposes Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments into the Union. There is, however, a fundamental difference between the subject matter of the European regulation and the Moldovan mechanism.

The European regulation was designed to screen foreign direct investments made by investors from third countries. It focuses on risks to security and public order and on cooperation between Member States and the European Commission. It does not constitute a general authorisation regime for every economic transaction and it does not proceed from the idea that a country's own citizens should seek state permission in order to invest.

The law of the Republic of Moldova has a much broader scope. It is not limited to foreign investors, but also applies to citizens of the Republic of Moldova and companies with domestic capital.

The mechanism covers not only foreign direct investments, but also the acquisition of control or shareholdings, concessions, public-private partnerships, investment agreements, the purchase of certain assets and some financing operations.

Article 7 of the law provides that a potential investor must obtain prior approval from the Council before making the investment, with responsibility for identifying this obligation resting with the investor.

This is where an important change in legal nature occurs. Under a risk-based screening mechanism, the authority identifies transactions that may pose a threat and subjects them to in-depth review. Under the Moldovan mechanism, the transaction is blocked until the investor obtains state permission, even where no concrete risk has yet been demonstrated.

The presumption is reversed: economic activity is no longer free unless a threat is identified, but is instead made conditional upon administrative approval.

European law in name only

The difference from the EU Regulation is not limited to the inclusion of domestic investors.

The European regulation places considerable emphasis on cooperation, notifications, deadlines, secure exchange of information and the participation of European institutions. The Moldovan law develops the domestic control and sanctioning component in detail, while participation in the European cooperation mechanism is incompletely regulated and, in certain respects, postponed until 2030. The law provides that notification of the Commission and Member States will become applicable only from that year.

In other words, the coercive component of the mechanism was built before the European cooperation component.

This imbalance is all the more significant because the European Union has already adopted a new act in this field. Regulation (EU) 2026/1386, adopted on 17 June 2026, will replace the 2019 Regulation as of 17 January 2028 and seeks to achieve clearer harmonisation of screening procedures.

The Republic of Moldova therefore risks amending and extensively applying a law declared to be aligned with a European standard that is itself due to be replaced, even though the national mechanism has not fully incorporated even the balance of the 2019 act.

The financial sector benefits from a privileged exemption

The law also establishes a difficult-to-explain distinction between sectors of the economy.

Investment activities and transactions carried out by entities in the financial sector, as well as those involving international financial institutions, are generally exempt from the mechanism.

By contrast, undertakings in energy, transport, aviation, communications, information technology, media, logistics and other sectors must seek prior approval, submit extensive documentation and remain exposed to ex officio examination and sanctions.

There may be a possible justification for the treatment of the banking sector: financial institutions are already subject to authorisation and prudential supervision. However, prudential supervision and national security screening are not identical.

Financial supervision focuses on the stability of the institution, the reputation of the acquirer and financial soundness. Investment screening addresses other risks as well: control exercised by a foreign state, access to critical infrastructure, sensitive data, strategic influence and public order.

If the legislator seeks to avoid duplication of procedures, the exemption should be linked to the existence of effective and equivalent sectoral control over the specific transaction. In its current form, the exclusion appears to be based more on the status of the entity than on the actual equivalence of the review.

The result is a clear procedural advantage for the financial sector and an additional burden on other undertakings.

How exceptional is the mechanism anymore?

Official documents published by the authorities show that the law is not used solely for a small number of high-risk foreign transactions.

In December 2023, the Council published an annex listing 94 media service providers and broadcasters identified in connection with the application of the mechanism. The list ends at position 94 and includes companies, associations and institutions from across the audiovisual sector.

At a single meeting, held on 14 April 2025, the agenda included dozens of undertakings from the energy, press, aviation, natural gas, petroleum, agriculture, logistics and digital infrastructure sectors. Some were seeking approval, others

were being examined for investments made without approval, while others were repeatedly asked to provide additional information and documents.

The large number of companies does not, in itself, prove the existence of violations. It does, however, show that the mechanism no longer operates as a rare intervention targeting exceptional foreign investments, but rather as a permanent administrative process applied to a broad range of economic activities.

In a security-based mechanism, the central question should be: “Is there a real and sufficiently serious risk?” In current practice, the question appears to have become: “Does the company operate in a sector listed by law?”

This shift has direct consequences. The greater the number of cases, the greater the delays, compliance costs and contacts between businesses and the decision-making authority.

Institutional resources are spent on reviewing ordinary transactions instead of being concentrated on genuine risks.

An approval that does not provide legal certainty

One of the most problematic solutions is the possibility of ex officio examination of investments regardless of when they were made.

The law allows the Council to reopen even investments that were previously approved. The investor must continuously satisfy the criteria of the law throughout the entire period of economic activity.

Approval therefore does not provide full legal stability. A company may invest, obtain authorisation, secure financing and develop infrastructure while remaining exposed to reassessment for an indefinite period.

Reopening could be justified where fraud, false information, changes in the beneficial owner or new facts indicating a serious threat emerge. The law, however, does not sufficiently limit reassessment to such circumstances.

For the business environment, this means that administrative risk does not end once approval has been granted. It may be reactivated, affecting the company's value, banking relationships, contracts and investment predictability.

Fines, unwinding of investments and suspension of activity

The consequences provided for by law are severe.

The Council may require the parties to restore the situation that existed prior to the investment. If this obligation is not fulfilled, it may impose a fine of 5% of turnover,

capped at five million lei. For newly established undertakings that have not generated turnover, the fine may range from two to five million lei. Economic activity may also be suspended where there is an imminent danger of irreparable harm.

The law also provides that enforcement of Council decisions may not be suspended until the case has been finally resolved by a court.

This means that an undertaking may be required to unwind an investment or may be prevented from operating before a court has finally reviewed the legality of the measure. A favourable court judgment delivered at a later stage cannot always remedy the loss of clients, withdrawal of financing, insolvency, loss of staff or damage to business reputation.

When the Government Decision goes beyond the law

The problems do not stop with Law No. 174/2021. Government Decision No. 437/2025, which should regulate implementation of the law, introduces measures exceeding the limits established by the law, contrary to Law No. 100/2017.

The regulation approved by the decision allows for the suspension of voting rights, the right to convene and hold a general meeting, the right to nominate members of governing bodies and the right to receive dividends. It also permits the temporary suspension or withdrawal of permits. Furthermore, point 27.2.3 authorises the application of “other necessary measures” for the enforcement of decisions and the protection of national security.

The law refers to suspension of economic activity under specified conditions. It does not list the suspension of dividends, blocking of corporate governance, permanent withdrawal of licences or the Council’s power to devise other measures on a case-by-case basis.

These are not merely technical details. They constitute separate forms of interference with property rights and corporate management.

A Government Decision may explain how a legal provision is to be applied. It cannot create an open-ended list of restrictions or authorise an administrative authority to define the extent of its own coercive power.

PAS MP Radu Marian’s amendment lowers the threshold established by law

The trend towards expanding administrative discretion was reinforced by an amendment tabled by PAS MP Radu Marian on 17 July 2026 to Article 6(b) of Law No. 174/2021.

The amendment removed both the word “particular” from the phrase “particular threat to state security” and the reference to the definition contained in State Security Law No. 618/1995. The new wording refers generically to “acts or omissions that pose a threat to state security”.

Removing the reference to the repealed law was necessary. However, replacing the concept of a “particular threat” with the much broader concept of a “threat”, without additional delimiting criteria, is not merely a technical correction. It lowers the legal threshold for state intervention and increases the risk of inconsistent or arbitrary application.

The change was introduced into a draft law that initially concerned photovoltaic systems, energy storage and construction regulations. In the official summary of amendments, the proposal is simply marked “Accepted”, without a separate legal analysis.

The public file does not contain a legal opinion, an anti-corruption assessment or a Government opinion specifically examining this change. The official amendment was submitted on 17 July and approved at second reading on 23 July, while no separate public consultation on this intervention can be identified in the legislative file for draft law No. 163/2026.

From confirmed information to a potential threat

Following the amendment, the law permits application of the restriction provided for in Article 6(b) where the authorities possess evidence and documented information concerning a person’s involvement in acts or omissions that pose a threat to state security.

The Government Decision lowers the threshold even further for the initiation of ex officio examination. Point 34 allows proceedings to be initiated on the basis of information indicating the existence of a “real or potential” threat.

The difference is fundamental. “Evidence or documented information” implies a minimum degree of verification and credibility. Information indicating a potential threat may include suspicions, predictions or hypotheses.

In a preventive field, it is normal for the state to analyse risks that have not yet materialised. However, the lower the threshold for initiating proceedings, the stronger the procedural safeguards must be.

The regulation also allows the investor to be informed of the initiation of an in-depth assessment at a later stage where the authority considers that notification could affect data collection. Such a delay may be temporarily justified, but it must not allow an adverse decision to be adopted without the undertaking knowing the substance of the allegations and having an opportunity to provide explanations.

From transparency to anonymisation

The law requires the Council to ensure transparency in its activities while respecting confidentiality.

The Government Decision provides that minutes are not to be published in full in order to protect personal data, state secrets, trade secrets and other restricted information. At the same time, it requires the publication of extracts clearly and concisely setting out the final decision on each application.

In practice, until October 2025, the extracts continued to identify the company name, IDNO, sector and the decision adopted. Minutes No. 24 of 13 October 2025 name the companies examined, including undertakings operating in energy and aviation.

Starting with Minutes No. 25 of 5 November 2025, the practice changed. The name of the company refused approval, the identity of the beneficiary of a conditional approval, parties to transactions and imposed conditions are concealed through anonymisation blocks.

The minutes continue to be formally published. However, formal publication is not the same as substantive transparency.

If the public cannot know who was examined, in which sector, for what operation and what decision was applied, it can no longer verify:

- whether two comparable companies were treated equally;
- whether a company is being repeatedly scrutinised;
- whether certain sectors are being favoured;
- whether conflicts of interest exist;
- whether the same criteria are applied consistently;
- whether anonymisation protects a genuine secret or merely shields the authority from public scrutiny.

The name of a legal entity entered in a public register is not, in itself, personal data or a trade secret. The transaction price, technology, the source of classified information or data relating to natural persons may be protected. There is, however, no automatic justification for concealing the identity of every company.

Is this a corruption mechanism?

Such a conclusion cannot be stated as fact without evidence of the solicitation, offering or receipt of undue advantages.

An institutional conclusion can, however, be drawn: the mechanism creates serious integrity vulnerabilities and an increased risk of corruption.

The risk arises from the cumulative effect of several factors:

- the authority has the power to approve or block a transaction;
- it may request additional documents;
- it may reopen approved investments;
- it may impose conditions;
- it may impose fines;
- it may suspend activity;
- it may affect corporate rights;
- decisions cannot be suspended pending final resolution of the case;
- recent practice no longer enables public verification of the identity of companies and the manner in which they are treated.

A decision with such significant economic value inevitably becomes a target for pressure, informal intervention, influence peddling or promises to “speed up” the case.

This does not mean that every member of the Council acts abusively, nor that every decision is corrupt. It means that the institutional architecture does not sufficiently reduce the possibility of abuse.

An integrity system is not built on the assumption that every public official will always act correctly. It is built through rules that make preferential treatment difficult, detectable and punishable.

Constitutional concerns cannot be ignored

Applying the law to a country's own citizens is not automatically unconstitutional. The state may regulate domestic operations in sensitive sectors.

However, restrictions must be clear, necessary and proportionate.

Several elements raise serious concerns:

The law prohibits certain persons from investing merely on the basis of their status as a suspect, accused or defendant, or the existence of criminal proceedings concerning serious offences, without always requiring a final conviction.

The financial sector benefits from a general exemption, while other undertakings are subject to heavy obligations and severe sanctions.

Investments may be reopened regardless of when they were made.

Approval may be permanently reassessed.

Property rights and economic activity may be affected before final judicial review.

And the Government Decision introduces measures that are not clearly provided for by law.

These aspects must be assessed in light of equality before the law, the presumption of innocence, property rights, effective access to justice, freedom of economic activity and the principle of proportionality.

It would not be responsible to state that the entire law is unconstitutional in the absence of a Constitutional Court judgment. It can, however, be stated that certain provisions are vulnerable and require rigorous scrutiny.

State security cannot be set against the rule of law

Law No. 174/2021 began from a legitimate objective: protecting the state against investments that may compromise infrastructure, data and strategic interests.

But a legitimate objective does not automatically make every means legitimate.

When European legislation intended for foreign investments comes to be applied extensively to a country's own citizens, when an entire sector benefits from an exemption, when approval may be reopened indefinitely, when a Government Decision adds measures affecting property rights and decisions become increasingly anonymous, the mechanism must be reassessed.

National security must not become a formula used to justify any form of interference. Nor should confidentiality become a shield against public accountability.

A strong state is not one in which the authorities can intervene without limits. It is one in which the authorities can intervene effectively, but only on the basis of clear, proportionate and verifiable rules.

The Republic of Moldova needs secure investments. But it equally needs a business environment in which approvals do not depend on the opaque discretion of an administrative body and in which the protection of state security does not become a general mechanism of control over the economy.

Requests of the Civic Movement “Construim Încredere”

The Civic Movement “Construim Încredere” calls for:

1. A legal and constitutional assessment of Law No. 174/2021 and Government Decision No. 437/2025, including the proportionality of measures affecting property, corporate rights and continuity of economic activity.
2. Revision of Article 6(b) and a clear definition of the concept of “threat to state security”, with a sufficiently serious threshold and verifiable criteria.

3. Removal from the Government Decision of measures that do not have an express and sufficiently clear legal basis, including the possibility of applying “other necessary measures” determined on a case-by-case basis.
4. Guaranteeing the investor’s right to be informed of the reasons for the examination and to provide explanations before an adverse decision is adopted, except for strictly necessary, reasoned and time-limited delays.
5. Revision of the absolute prohibition on judicial suspension of Council decisions and the introduction of the possibility of interim measures where immediate enforcement may cause serious or irreparable harm.
6. Reassessment of the general exemption granted to the financial sector and its replacement with a rule based on the existence of effective and equivalent sectoral supervision.
7. Restoration of substantive transparency in the Council’s activities by publishing the identity of the legal entities examined, the sector, type of transaction and decision adopted, while protecting only information that is genuinely confidential.
8. Examination of major changes to the mechanism through separate legislative proposals accompanied by proper justification, legal review, anti-corruption assessment, impact analysis and genuine public consultation.

State security cannot be set against the rule of law. A legitimate objective does not automatically make every means legitimate.

The Republic of Moldova needs secure investments, but it also needs a business environment in which approvals do not depend on the opaque discretion of an administrative body. A strong state is not one in which the authorities can intervene without limits, but one in which they can intervene effectively, on the basis of clear, proportionate and verifiable rules.