

COVID-19: THE GOLDEN POWER IN THE ITALIAN STIMULUS PACKAGE

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AT+ICA
THE GERMANY ASSOCIATION OF
TRADE - INVESTMENT CONTRACTS COMPLIANCE ATTORNEYS



FOREIGN DIRECT INVESTMENTS – EVOLUTION OF THE ITALIAN LEGAL FRAMEWORK

- From the age of privatization and the *Golden Share* (Law Decree 31 May 1994 No 332) to the *Golden Power* (Law Decree 15 March 2012 No 21)
- Law Decree 21/2012 was amended by Law Decree 21 September 2019 No 105 to regulate cybernetic security (5G)
- Law Decree 28 April 2020 No 23: the pandemic triggers the introduction of blanket provision to protect strategic assets
- Law Decree 23/2020 is amended by Law 40/2020: conversion into Law of Law Decree 23/2020



THE LEGAL FRAMEWORK IN ITALY BEFORE THE RECENT AMENDMENTS

Regulated sectors

- Defence and national security
- Transportation, telecommunication, and energy
- 5G technologies
- Other sectors to be identified by the Government within the categories listed in Regulation (EU) 2019/452 by an implementing measure of the Government (Decree of the Presidency of the Council of Ministers – DPCM)

Regulated transactions

- Corporate decisions (e.g. change of by-Laws, mergers, de-mergers, transfer of going concerns, etc.)
- Acquisition of control or of certain relevant participations
- Supply contracts (5G)

Categories of investors

- Both Italian and foreign entities in respect of the defence and national security sectors
- Non-EU entities for 5G, telecommunication, transportation and energy

THE MARKET CRASH AND THE EU REACTION

- The European Union adopted a Framework Regulation only in March 2019 (Regulation (EU) 2019/452).
- Markets plummeted in March as a consequence of the pandemic
- On 25 March 2020, the European Commission issued a Communication urging the Member States to take measures to protect their strategic assets – with particular attention to the health care sector – from hostile actions by non-EU investors

FTSE MIB

17.810,40 +1,22

Data - Ora Ultimo Valore 26/05/20 - 14.54.00

Dati in Real Time



Scheda Valori Analisi Tecnica Notizie

GRAFICO



THE ITALIAN GOVERNMENT ADOPTS COUNTER-MEASURES – THE PROVISIONAL FRAMEWORK INTRODUCED BY LAW DECREE 23/2020

Additional regulated sectors

- All sectors listed in Article 4 of Regulation (EU) 2019/452 and, in addition:
 - The Financial sector (credit and insurance)
 - The Health sector (production, import and wholesale distribution of medical/surgical devices and PPE)
 - Agri-food and steel sectors, also in order to pursue the further goal of maintaining occupational and productivity levels in Italy

Additional regulated transactions

- Change of ownership, control, availability or designated use of assets in all the above listed sectors

Additional categories of investors

- Foreign entities or individuals - **including EU investors** - in case they take control over entities active in the above sectors
- Non-EU investors in case they acquire more than 10% (corresponding at least to € 1M) in the above entities

The Law Decree has also modified the Consolidate Law on Finance (*Testo Unico Finanziario - TUF*) by granting to the Italian Securities Exchange Commission (CONSOB) the power temporarily lower the threshold (now as low as 5%) beyond which certain disclosure obligations apply to investors acquiring qualified shares in publicly traded companies

THE ITALIAN GOVERNMENT ADOPTS COUNTER-MEASURES – THE IMPLEMENTING DECREE OF LAW DECREE 21/2012

- The provisional framework will be in force until 31 December 2020
- The Italian Government is currently working on a draft of the implementing measure required by the Law (Decree of the Presidency of the Council of Ministers - DPCM) to identify specific assets and activities of strategic relevance for the national interest in the sectors referred to in Article 4, paragraph 1, of Regulation (EU) 2019/452, as well as the type of acts or transactions to which those provisions do not apply
- Until the adoption of such implementing measure, the notification obligation will apply to all the new regulated sectors



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