

## 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

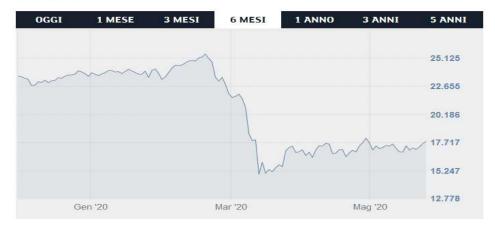
- The European Union adopted a Framework Regulation only in March 2019 (Regulation (EU) 2019/452).
- Markets plummeted in March as a consequence of the pandemic
- On 25 March 2020, the European Commission issued a Communication urging the Member States to take measures to protect their strategic assets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





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





MILANO ROMA

Foro Buonaparte 54 Via Firenze 32

Tel.: +39 024814994 Fax: +39 0243981694

info@studiopadovan.com









