

Global Foreign Direct Investment -

Italy

Under the Italian foreign investment regime (set forth in Law Decree No. 21 of March 15, 2012, as amended (the **FDI Decree**), and in several implementing measures), the Italian government has the power to impose conditions on, or veto, investments in Italian companies and assets in strategic sectors when such investments may jeopardize the national security or other public interests (often referred to as the "golden power"). In addition, certain actions by companies in strategic sectors require notification before they can be implemented.

Since April 2020 - in the wake of the first wave of the COVID-19 outbreak - Italy has adopted measures that have increasingly broadened the scope of the government's powers under the FDI Decree and have extended the regime to new areas. Many of these measures were originally applicable on a temporary basis but have been made permanent.

Strategic Sectors and Relevant Transactions

As from January 2023, the following are the main transactions and corporate actions subject to government scrutiny under the FDI regime.

Defense and National Security sectors

- Acquisition by non-EU entities or EU (including Italian) entities of a stake in Italian companies in the defense and national security sectors in excess of 3 percent (if the company is listed) or 5 percent (if the company is not listed) and any increase of the stake in excess of 5 percent (if the company is listed), 10 percent, 15 percent, 20 percent, 25 percent and 50 percent;
- Resolutions, acts and transactions adopted by entities holding strategic assets in the defense and security sectors, resulting in a change of ownership, control or availability of such assets (including relating to mergers, demergers, transfers of going concerns or subsidiaries, transfer abroad of the registered office, changes to corporate purpose and/or voting rights, and transfers of rights over such strategic assets and undertakings that affect their use).

Broadband electronic telecommunication networks based on 5G technology, cloud-based and other assets relevant to cybersecurity

- Acquisition by non-EU entities or EU (including Italian) entities of (i) goods and services for the design, realisation, maintenance and management of broadband electronic telecommunication networks based on 5G technology, (ii) advanced technology components functional to building or managing 5G networks, or (iii) goods, services, activities and technologies relevant for cybersecurity and cloud technology (to be identified by an implementing decree). In addition, each year the buyer must submit an annual plan describing the prospects for the development of the 5G network to the Italian government.

Energy / Transport / Financial, Credit and Insurance / Communications / Healthcare / Agri-food sectors

- Acquisitions by non-EU entities or EU (including Italian) entities of controlling interests in Italian companies in the above-mentioned sectors;
- Acquisitions by non-EU entities of a stake of at least 10 percent in the share capital or voting rights in Italian companies, so long as the

investment value is equal to or exceeds €1m, and any increase of the stake in excess of 15 percent, 20 percent, 25 percent and 50 percent of the share capital or voting rights of the company;

- Resolutions, acts and transactions by entities holding strategic assets in the above-mentioned sectors, resulting in change of ownership, control or availability of such assets (including corporate resolutions that imply mergers, demergers, transfer of the registered office abroad, changes to the corporate purpose and/or to voting rights, winding-up, transfer of a going concern or of a subsidiary which contains the relevant asset or the assignment of such asset by way of collateral);
- Incorporation of a company holding strategic assets or carrying out strategic activities in the above-mentioned sectors if one or more non-EU entities hold a stake of at least 10 percent of the share capital or voting rights in such company;
- Relevant strategic assets for each of these sectors are identified in measures implementing the FDI Decree.

(or, for information requested by the PCM to third parties, 20) business days. If another EU Member State or the EU Commission intends to review the transaction (independently or at the request of the Italian government), the review period is suspended until the observations or opinion of the relevant EU Member State or the EU Commission have been delivered.

In case of acquisitions, the buyer is responsible for the filing, although the target company must either co-sign the notification or receive an information notice and be given the opportunity to join the proceedings. Parties may seek a preliminary assessment of a proposed transaction by the PCM staff through a pre-filing mechanism.

If the parties fail to notify a transaction, the PCM may review the transaction on its own initiative.

Procedure

Pursuant to the FDI Decree, upon receipt of the filing, the Office of the President of the Council of Ministers (**PCM**) has up to 45 business days (for transactions concerning 5G technologies, 30 days, which may be extended up to 70 days) to review the transaction. If additional information is needed, the PCM may suspend – once – such period until the receipt of the requested information. The requested information must be provided within 10