Foreign Direct Investment Regime in Italy

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Scope of FDI Regime: Transactions subject to review

In Italy, Law Decree 21/2012 provides for a screening mechanism for the Italian government to assess foreign direct investments which may entail a threat of serious damage to security, public order or other national public interests identified by the law or by decree of the Prime Minister. The review process is conducted by the Presidency of the Council of Ministers through an internal office group known as "DICA" (i.e. "*Dipartimento per il coordinamento amministrativo*").

The screening mechanism applies to foreign investments:

- in the defence and national security sectors (including the 5G and cloud technology);
- in the energy, transport, communications and technology intensive sectors (including large hydroelectric concessions and concessions for the exploitation of geothermal resources);
- in the following sectors, as set out in EU Regulation 2019/452 *(i)* critical technologies and dual use items, including artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum and nuclear technologies as well as nanotechnologies and biotechnologies; *(ii)* critical infrastructures, including energy, transport, water, communications or finance (including the credit and insurance sectors), health (including the manufacture, import and wholesale medical, medical-surgical and personal protection devices); *(iii)* supply of critical inputs, including energy or raw materials, as well as food security; *(iv)* access to sensitive information, including personal data, or the ability to control such information; *(v)* the freedom and pluralism of the media.

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In these strategic sectors, the Italian Government is entitled to exercise "golden powers" which vary depending on the affected sector.

Defence and National Security sectors:

- The purchase of shareholdings in companies that carry out activities of strategic importance to defence and national security:
  - **Corresponding golden power**: the Italian Government may (i) impose specific conditions in relation to the security of supply, the security of information, technological transfers and the control of exports; (ii) reject the purchase and order the resale of the shareholdings.
- Any decision, act or transaction adopted by a company holding one or more strategic assets in defence and national security sectors, where the decision, act or transaction modifies the ownership, control, availability or use of those assets:
  - **Corresponding golden power**: the Italian Government may (i) impose specific conditions in relation to the protection of the essential interests of defence and national security; (ii) veto the resolutions.
- The annual plans concerning the purchase of goods or services connected with the provision of broadband electronic communications services based on 5G and cloud technology:
  - **Corresponding golden power**: the Italian Government may (i) approve the plan, possibly imposing requirements or conditions, or (ii) deny approval of the plan by exercising a veto power.
- Setting up a company or a branch that carries out activities of strategic importance to defence and national security.
  - **Corresponding golden power**: the Italian Government may (i) impose specific conditions to ensure protection of the Italian state's interests; (ii) veto the transaction.

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Energy, Transport, Communications and Technology intensive sectors; Sectors set out in EU Regulation 2019/452; Credit and Insurance and Health sectors:

- Any decision, act or transaction adopted by a company holding one or more strategic assets in these sectors, where the decision, act or transaction modifies the ownership, control, availability or use of those assets
  - **Corresponding golden power**: the Italian Government may (i) impose specific conditions to ensure protection of the Italian state's interests; (ii) veto the decision, act or transaction.

- The purchase of shareholdings in a company holding one or more strategic assets in the above sectors
  - **Corresponding golden power**: the Italian Government may (i) impose specific conditions to ensure protection of the Italian state's interests; (ii) reject the purchase.

- Setting up a company or a branch operating in the above-mentioned sectors if one or more non-EU partners have a share of at least 10%
  - **Corresponding golden power**: the Italian Government may (i) impose specific conditions to ensure protection of the Italian state's interests; (ii) veto the transaction.

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Notifying Parties and Thresholds

Sector	Notifying Parties	Thresholds
Defense and National Security	Non-EU and EU investors (including Italian investors)	a holding higher than 3%, 5%, 10%, 15%, 20%, 25% and 50%
Energy, transport, communications and technology intensive sectors as well as the sectors listed in EU Regulation 2019/452	Non-EU investors	a controlling stake or at least 10% of the share capital of a company (with a minimum investment value of EUR 1 million) or where the proposed transaction will see the purchase of shares exceeding 15%, 20%, 25% and 50% of the relevant company
Energy, transport, communications, health, food security and finance (including the credit and insurance sectors)	EU investors (including Italian investors)	a controlling stake
In the case of share deals, the notification, if possible, must be made jointly by the acquiring company and the target company. If the joint notification is not made, the acquiring company must notify the target company with an information note to enable it to participate in the proceedings. In the case of transactions other than the purchase of shares, the notification must be made directly by the company that carries out activities of strategic importance.		

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Procedure

Is the regime mandatory (i.e. are parties obliged to notify of the transaction)?

- Filing is mandatory for parties to notify where their transaction falls into the relevant sectors. A pre-notification procedure is available to check – in case of doubt – whether the transaction falls within the scope of the regime.

Is the regime suspensory (i.e. must parties wait for an approval decision before completing a transaction)?

- During the review period the transaction is suspended, and the parties must wait for approval prior to completing.

What is the timing between an approval decision being issued and the commencement of a review by the authority?

- The decision must be made within 45 calendar days (30 calendar days in case the transaction concerns the 5G and cloud sectors), however the term can be extended in case of incomplete notification. Should the government fail to act by this deadline, then the transaction becomes effective.

Are there penalties for failing to notify or failing to abide by the authority's ruling?

- Failure to comply with the notification requirement may result in the nullity of the transaction and/or the imposition of a fine of up to twice the transaction value and in any case not less than 1% (3% for 5G and cloud technologies sectors) of the cumulative turnover (in the last fiscal year) of the companies involved. The same fines are also applied to the notifying companies and the target company in case of failure to comply with the conditions imposed by the Government.

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Impact on M&A

In cases where an acquisition/transaction is subject to prior approval by the Italian government due to the sector of the target company the parties should take into account the 45 calendar day period and the possible extensions of the same for the process of obtaining approval, when planning the deal and timelines.

In addition, where the proposed acquisition/transaction does fall within the Italian foreign investment regime, parties should understand that completion is by no means certain, as the government has the power to block the deal or to require conditions that would make the transaction unattractive to the parties.

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