



Gatti Pavesi Bianchi

COVID-19 Update
AMENDMENTS TO THE “GOLDEN POWER”
REGULATION

10 April 2020

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In light of the severe impact of the current Covid-19 emergency on the economic scenario, the Law Decree No. 23 of 8 April 2020 (the “Decree”), entered into force on 9 April 2020, provides for several measures aimed at enhancing the protection of Italian strategic companies from possible takeovers or other transactions which may jeopardise the essential national interests (please see Articles 15 and 16 of the Decree).

Such purpose is pursued through the extension of the scope and application of the so called “golden power” regulation already in force ⁽¹⁾ (the “Golden Power Regulation”). The Golden Power Regulation grants the Italian Government with the special powers either to prevent envisaged acquisitions of strategic Italian companies or to impose specific undertakings and conditions to prospective purchasers (so called “golden powers”).

The most remarkable amendments of the Decree to the Golden Power Regulation can be summarized as follows.

1. New sectors subject to the Golden Power Regulation

The Decree has expanded the scope of the Golden Power Regulation (previously basically limited to defence, security, energy, telecommunication and infrastructure sectors) which now applies also to companies operating in all sectors listed under Article 4 of the EU Regulation 2019/452 ⁽²⁾, and in particular:

- (i) critical infrastructures, whether physical or virtual, including energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructures, and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure;
- (ii) critical technologies and dual use items as defined in point 1 of Article 2 of Council Regulation (EC) No. 428/2009, including artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum and nuclear technologies as well as nanotechnologies and biotechnologies;
- (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;

⁽¹⁾ Reference is made to Law Decree No. 21/2012, as subsequently amended by Law Decree No. 105/2019.

⁽²⁾ Further specifications to the above sectors shall be provided under certain decrees to be issued by the Italian Government. Please also consider that critical infrastructures and critical technologies were already covered by the Golden Power Regulation. However, the necessary implementation decrees had not yet been issued.

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- (v) the freedom and pluralism of the media.

Furthermore, the Decree specifies that the Golden Power Regulation applies also to all **financial, banking and insurance sectors**.

The Decree also clarified, with regard to the abovementioned sectors (i.e. those listed under Article 4 of the EU Regulation No. 452/2019 as well as the financial, banking and insurance sectors), that, without prejudice to the obligation to notify the relevant transactions, the Government may exercise the “golden powers” only to the extent that the protection of the relevant essential interests of the State or the protection of security and public order are not already adequately guaranteed by specific regulation of the relevant sector.

2. Notification of relevant transactions

Until 31 December 2020, any of the following transactions regarding entities falling in the new sectors listed in paragraph 1 above as well as all the sectors already covered by the original rules pursuant to article 2 of the Law Decree No. 21/2012 (energy, transportation and telecommunication), must be notified to the Government:

- (i) adoption of resolutions, corporate deeds and transactions entailing changes in the ownership, control or availability of the strategic assets or changing their destination, including, inter alia, merger and de-merger, transfer of the registered office in other countries, liquidation or other amendments to the by-laws. In the above mentioned cases the notification shall be sent by the company itself;
- (ii) envisaged acquisitions by: (1) EU entities and non-EU entities, where the envisaged acquisition regards a controlling stake pursuant to article 2359 of the Italian Civil Code and the Legislative Decree of 24 February 1998, no. 58 and (2) non-EU entities (or entities controlled by an EU public administration), where (a) the envisaged acquisition regards a stake equal or higher than the 10% of the voting rights or corporate capital ⁽³⁾ and the aggregate value of the investment is equal to or higher than Euro 1 million; or (b) in any case if after the envisaged acquisition, the purchaser would hold a stake representing more than 15%, 20%, 25% and 50% (as the case may be) of the voting rights or the corporate capital. In the abovementioned cases the notification shall be sent by the purchaser.

The above provisions apply when the obligation to notify the relevant transaction (i.e. acquisitions or adoption of corporate deeds) arises within the period from the date of entry into force of the Decree (i.e. 9 April 2020) until 31 December 2020 (even where the notification should be filed after 31 December 2020 and in case of failure to submit the relevant notification). Furthermore, the Decree clarifies that acts and decisions of the

⁽³⁾ Please note that any stake already held, directly or indirectly, by the purchaser, must be taken into account to verify whether the above 10% threshold is reached.

Government, taken as a consequence of the exercise of the notifications described above, remain valid and effective even after 31 December 2020.

3. *Ex officio* commencement of the procedure

Where the company or the purchaser does not comply with the obligation to submit any relevant notification, the Government retains the right to commence *ex officio* the procedure aimed at evaluating whether to exercise any “golden powers” (provided in any case that absence of required notification may lead to the application of the administrative fines set out under the Golden Power Regulation).

Such a rule applies to all sectors falling under the scope of the Golden Power Regulation, including, but not limited to, the “new” sectors listed under No. 1 above.

4. Request for further information on corporate transactions and acquisitions

According to the Decree, the Government may request public administrations, public or private entities, companies or other third parties to provide information and documentation, in order to evaluate whether to exercise or not any “golden powers”.

TEAM



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The Firm assists Italian and international clients in the various practice areas concerning energy, water, transportation, infrastructure and telecommunication sectors, by means of multidisciplinary and transversal consultancies, including corporate and administrative law, public contracts, such as PPP contracts, concessions and public works and services, etc.

We offer assistance to our clients in all stages of development of projects as well as in the relevant financing. We advise several multinational companies which are leaders in the energy sector, in the transport and infrastructure sectors as well as in the telecommunication field.

We assist numerous public and private companies in relation to regulatory and administrative aspects in strategic sectors, including, for example, the s.c. “golden power”. The credibility acquired with the Authority during transactions with a positive outcome is an additional element which qualifies and enables us to provide assistance in the most complex and innovative operations in the energy, infrastructure and telecommunications sectors.

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