



UPDATES ON THE ITALIAN GOVERNMENT'S REVIEW OF INVESTMENTS IN STRATEGIC INDUSTRIES

1. Introduction

On 7 June 2020, Law no. 40/2020 (the “**Conversion Law**”) converted into law, with some amendments, Law Decree no. 23/2020 (the “**Decree**”). As described in our previous newsletter of April 2020 (available [here](#)), the Decree introduced new rules that significantly strengthened the ‘foreign direct investment’ (FDI) screening regulation (so-called “golden power” regulation), including a provisional regime for the Covid-19 emergency.

In short, the Decree introduced the obligation to file also transactions, by any EU or extra-EU entity, involving companies operating assets falling in the so-called ‘high tech sectors’ listed in Article 4, par. 1, letters a) b) c) d) and e) of Regulation (EU) 2019/452, *i.e.*:

- a) **critical infrastructures**, whether physical or virtual, including energy, transportation, water, health, communications, media, data processing or storage, aerospace, defense, electoral or financial infrastructure, and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure;
- b) **critical technologies** and dual use items as defined according to European regulations, including artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defense, energy storage, quantum and nuclear technologies as well as nanotechnologies and biotechnologies;
- c) **supply of critical inputs**, including energy or raw materials, as well as food security;
- d) **access to sensitive information**, including personal data, or the ability to control such information;
- e) freedom and pluralism of the **media**.

In addition, the Decree introduced a temporary regime providing that, until 31 December 2020, the following transactions are subject to foreign investment filing:

- any resolution and transaction adopted/entered into by any EU or extra-EU entity holding strategic assets in the energy, transportation and communications sectors, as well as high tech, resulting in change of control, of ownership, or of use with respect to the assets/businesses indicated above (asset deals);
- any acquisition of shareholdings (share deals), by any EU or extra-EU entity, in companies holding strategic assets in the sectors of energy, transportation and communications, as well as high tech, resulting in a change of control of the target company;
- any acquisition of shareholdings (share deals), by any extra-EU entity, in companies holding strategic assets in the sectors of energy, transportation and communications, as well as high tech, resulting in the acquisition of at least 10% of share capital or voting rights, provided that the total investment value is equal to or higher than Euro one million. Such acquisitions will be also subject to communication whenever the holding thresholds of 15%, 20%, 25% and 50% are exceeded.



Finally, the Decree entitled the Government to commence *ex officio* the procedure to assess the exercise of the golden power (in case of failure to report a transaction).

The main amendments introduced by the Conversion Law to the Decree are the extension of the golden power regulation to the **agri-food** and **steel sectors** and the introduction of **new evaluation criteria** for the FDI screening in the said sectors, as well as some clarifications regarding the scope of application of the FDI screening to the health and financial sectors.

2. Agri-food and steel sectors

The Conversion Law has clarified that the temporary regime applicable until 31 December 2020, including the power of the Government to commence *ex officio* the golden powers procedure, **applies to the agri-food and steel sectors also to safeguard the employment levels and productivity on the national territory.**

3. Health sector

The Conversion Law specified that the scope of Article 4(1) of Regulation (EU) 2019/452 includes, in the healthcare sector, also the **production, import and wholesale distribution of medical and medical-surgical devices, as well as personal protection equipment.** Such specification seems related to the strategic importance of such equipment during the current situation of emergency due to the Covid-19.

4. Banking and insurance sectors

The Conversion Law introduced minor wording amendments which basically confirm the applicability of the golden power regulation to the banking and insurance sectors, that are now included in the wider financial sector subject to the golden power regulation.

5. Adoption of the decree for the identification of the strategic assets in the high tech sectors

According to the Decree, a further identification of the strategic assets and activities will occur through a further governmental decree.

On the basis of a draft of the decree preliminarily discussed by the Council of Ministers, the strategic assets will be likely identified in the following sectors: energy, water, health, management of personal and sensitive data, financial, banking and insurance, high tech (robotics, artificial intelligence, cybersecurity, semiconductors, nanotechnologies and biotechnologies), aerospace, agri-food, dual-use products.

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The Corporate Finance, Administrative Law, EU, Antitrust and Regulation and Telecommunication, Media & Technology Departments of Legance are available to provide any clarifications, also in respect of any specific situation which may be of interest to you.

For further information:

<p>Alessandro Botto</p> <hr/> <p>Partner</p> <p>T. +39 06.93.18.271 abotto@legance.it</p>	<p>Cecilia Carrara</p> <hr/> <p>Partner</p> <p>T. +39 06.93.18.271 ccarrara@legance.it</p>	<p>Vito Auricchio</p> <hr/> <p>Partner</p> <p>T. +39 06.93.18.271 T. +39 02.89.63.071 vauricchio@legance.it</p>
<p>Ada Esposito</p> <hr/> <p>Counsel</p> <p>T. +39 06.93.18.271 aesposito@legance.it</p>	<p>Valerio Mosca</p> <hr/> <p>Counsel</p> <p>T. +39 06.93.18.271 vmosca@legance.it</p>	<p>Giovanna Russo</p> <hr/> <p>Counsel</p> <p>T. +39 06.93.18.271 grusso@legance.it</p>

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