

## **CORONAVIRUS: ITALY STRENGTHENS FOREIGN DIRECT INVESTMENT REGIME**

To tackle the impact of Coronavirus (Covid-19) and its aftermath, the Italian Government has become more protective over Italian strategic sectors and, accordingly, has strengthened the Italian foreign direct investment regime. This move is part of a broader European strategy towards stricter tests and requirements over foreign hostile buyouts.

### **INTRODUCTION**

On 8 April 2020, the Italian Government ("**Government**") has adopted the Law Decree n. 23 ("**Decree**") which broadens its screening powers over foreign direct investments ("**FDI**").

Firstly, these new provisions extend the scope of the strategic sectors subject to the Government's screening powers. Secondly, even acquisitions of Italian strategic companies from EU subjects must be notified to the Government. Thirdly, the Government enlarges its powers to detect critical acquisitions.

It must be pointed out that this new regime is immediately applicable to any acquisitions which are in a pre-closing phase (although the signing has already occurred).

In the same vein, the obligations to disclose significant shareholdings into Italian listed companies have been strengthened.

### **THE EXTENSION OF THE STRATEGIC SECTORS**

Since 2012 onwards, the Italian FDI regime requires notification to the Government of acquisitions of stakes in companies owning assets in strategic sectors (*i.e.*, defence, public security, energy, transports and communications), if certain thresholds are met. In 2019, the list of sensitive sectors was enlarged including also the broadband electronic communication based on 5G technology (which is subjects to a FDI special regime) and sectors listed in letters a) and b) (as illustrated here below) of the Regulation (EU) 452/2019<sup>1</sup> ("**EU Regulation**").

The Decree expands furtherly the scope of strategic sectors and fully aligns the Italian FDI regime with the EU Regulation. Indeed, from now on, not only the categories listed in letters a) and b) but also those included in letters c), d) and

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<sup>1</sup> Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union, OJ L 79I, 21.3.2019, p. 1–14.

e) of the EU Regulation are subject to the notification obligation to the Government. These new sectors are as follows:

- a) **critical infrastructure**, whether physical or virtual, including (i) energy, (ii) transport, (iii) water, (iv) health, (v) communications, (vi) media, (v) data processing or storage, (vi) aerospace, (vii) defence, (viii) electoral or financial infrastructure, and (ix) sensitive facilities, as well as (x) land and real estate crucial for the use of such infrastructure;
- b) **critical technologies** and dual use items including (i) artificial intelligence, (ii) robotics, (iii) semiconductors, (iv) cybersecurity, (v) aerospace, (vi) defence, (vii) energy storage, (viii) quantum and nuclear technologies as well as (ix) nanotechnologies and (x) 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) the freedom and pluralism of the **media**.

In addition, even the financial, insurance and banking sectors fall under the scope of Government's screening.

Implementing decrees are expected to be adopted soon in order to detail the industries included in the abovementioned sectors. Pending their adoption, a broad interpretation may be embraced, also considering the Government's statements moving towards this direction. For instance, the food security sector (see letter c) above) is likely to refer also to the food industry.

#### **EXPANSION OF THE ACQUIRERS AND OF THE RELEVANT PERCENTAGE OF THE SHAKES**

As far as for the energy, transport, communications, financial, insurance and banking and all the above-mentioned sectors included in the EU Regulation are concerned, the new rules provide that notification is triggered in the following two cases:

- a) a **EU subject** acquires **control** over the Italian target active in these strategic sectors.
- b) a **non-EU subject** acquires:
  - (i) a stake (or voting rights) at least equal to **10%** of the capital of an Italian strategic target and the overall value of the investment is at least equal to € 1 million; **OR**
  - (ii) a stake equal to **15%, 20%, 25% or 50%** of the capital of an Italian strategic target.

According to the Decree, this new regime remains in force until 31 December 2020.

For the sake of clarity, the Decree does not prejudice the pre-existing FDI rules which set forth more stringent thresholds for the **defence and national security sectors** as well as the *ad hoc* regime for **5G technology**.

#### **EXTENSION OF THE GOVERNMENT'S SPECIAL POWERS**

Finally, from now on, the Government is entitled to exercise *ex officio* its power to oppose against (or to establish special conditions over) any of the abovementioned acquisitions in the lack of a notification from the acquirer.

#### **DISCLOSURE OBLIGATIONS OF SIGNIFICANT SHAREHOLDINGS IN ITALIAN LISTED COMPANIES**

Additional protective measures have been adopted by Consob for the purpose of strengthening disclosure obligations of significant shareholdings in certain Italian listed companies. The latest measure entered into force on 11 April 2020 and will be effective for a period of 3 months (*i.e.* until 11 July 2020), subject to earlier revocation by Consob.

The resolution adopted by Consob lowered the minimum threshold triggering disclosure obligations from 3% to 1% of the share capital for certain Italian listed companies (see list "A" below) and from 5% to 3% for certain Italian listed SMEs (see list "B" below). Additionally, any legal or natural person holding - as of 11 April 2020 - a participation equal to or higher than 1% of the share capital of certain Italian listed companies (see list "A" below) or 3% for certain Italian listed SMEs (see list "B" below) have 10 business days to make the disclosure.

Furthermore, for all the companies listed in "A" and "B", Consob has lowered from 10% to 5% the threshold triggering the additional disclosure obligations relating to the future plans for the six months following the acquisition.

## LISTS

### List A

1	A2A SPA
2	ANIMA HOLDING SPA
3	ASSICURAZIONI GENERALI SPA
4	ASTM SPA
5	ATLANTIA SPA
6	AZIMUT HOLDING SPA
7	BANCA MEDIOLANUM SPA
8	BANCA POPOLARE DI SONDRIO, SOCIETA' COOPERATIVA PER AZIONI
9	BANCO BPM SPA
10	BPER BANCA SPA
11	CERVED GROUP SPA
12	ENEL SPA
13	ENI SPA
14	FINECOBANK BANCA FINECO SPA
15	HERA SPA (HOLDING ENERGIA RISORSE AMBIENTE)
16	INFRASTRUTTURE WIRELESS ITALIANE SPA -INWIT
17	INTERPUMP GROUP SPA
18	INTESA SANPAOLO SPA
19	IREN SPA
20	ITALGAS SPA
21	ITALMOBILIARE SPA
22	LEONARDO - SOCIETA' PER AZIONI
23	MEDIASET SPA
24	MEDIOBANCA - BANCA DI CREDITO FINANZIARIO SPA
25	MONCLER SPA
26	OVS SPA
27	PIRELLI & C. SPA
28	PRYSMIAN SPA
29	SAIPEM SPA
30	SALINI IMPREGILO SPA
31	SANLORENZO SPA
32	SARAS SPA RAFFINERIE SARDE
33	SNAM SPA
34	SOCIETA' CATTOLICA DI ASSICURAZIONE SOCIETA' COOPERATIVA
35	TELECOM ITALIA SPA
36	TERNA - RETE ELETTRICA NAZIONALE SPA
37	UNICREDIT SPA
38	UNIONE DI BANCHE ITALIANE SPA
39	UNIPOL GRUPPO SPA

### List B

1	ACOTEL GROUP SPA
2	ACSM-AGAM SPA
3	AEROPORTO GUGLIELMO MARCONI DI BOLOGNA SPA
4	ALKEMY SPA
5	AVIO SPA
6	BANCA FARMAFACTORING SPA
7	BANCA FINNAT EURAMERICA
8	BANCA SISTEMA SPA
9	BASIC NET SPA
10	BASTOGI SPA
11	BE THINK, SOLVE, EXECUTE SPA

12	BF SPA
13	BIALETTI INDUSTRIE SPA
14	BIOERA SPA
15	BORGOSESIA SPA
16	CALEFFI SPA
17	CAREL INDUSTRIES SPA
18	CELLULARLINE SPA
19	CENTRALE DEL LATTE D'ITALIA SPA
20	CHL - CENTRO HL DISTRIBUZIONE SPA
21	CIR SPA
22	CLASS EDITORI SPA
23	COIMA RES SPA SIIQ
24	COMPAGNIA IMMOBILIARE AZIONARIA - CIA SPA
25	CREDITO VALTELLINESE SPA
26	CSP INTERNATIONAL FASHION GROUP SPA
27	DIGITAL BROS SPA
28	DOVALUE SPA
29	EL.EN. SPA
30	ENERVIT SPA
31	EPRICE SPA
32	EQUITA GROUP SPA
33	ESPRINET SPA
34	EUKEDOS SPA
35	EUROTECH SPA
36	GABETTI PROPERTY SOLUTIONS SPA
37	GEDI GRUPPO EDITORIALE SPA
38	GRUPPO MUTUIONLINE SPA
39	GUALA CLOSURES SPA
40	IGD - IMMOBILIARE GRANDE DISTRIBUZIONE SIIQ SPA
41	ILLIMITY BANK SPA
42	ITWAY SPA
43	LA DORIA SPA
44	LVENTURE GROUP SPA
45	MOLECULAR MEDICINE SPA
46	MONDO TV SPA
47	OLIDATA SPA
48	OPENJOBMETIS SPA
49	ORSERO SPA
50	PRIMA INDUSTRIE SPA
51	RATTI SPA
52	RCS MEDIAGROUP SPA
53	RETELIT SPA - RETI TELEMATICHE ITALIANE SPA
54	RISANAMENTO SPA
55	ROSS SPA
56	SABAF SPA
57	SAES GETTERS SPA
58	SAFILO GROUP SPA
59	TAMBURI INVESTMENT PARTNERS SPA
60	TECHEDGE SPA
61	TESMEC SPA
62	TISCALI SPA
63	TREVI - FINANZIARIA INDUSTRIALE SPA
64	TXT E-SOLUTIONS SPA
65	UNIEURO SPA

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