

COVID-19

Decree-Law no. 23 of 8 April 2020

Extension of the Government's "Golden Powers"

Articles 15 and 16 of Decree-Law no. 23 of 8 April 2020 strengthened the Italian Government's "Golden Powers", which had been introduced¹ to protect the ownership structure of companies engaged in strategic areas and areas of national interests; they consist of special powers which the Italian Government may exercise in defense, national security, 5G broadband services, Energy, Transport, Communications and other strategic sectors.

NOTA BENE:

Depending on the sector, the powers basically consist in:

- ◆ Voting against the acquisition of shareholdings;
- ◆ Vetoing company resolutions;
- ◆ Imposing specific conditions in respect of company resolutions or execution of contracts,

and may be exercised subject to giving appropriate notification to the Office of the Italian Prime Minister².

ENTITIES CONCERNED

Any organization, including an EU organization, which is planning to acquire shareholdings in companies holding assets and contracts in the following sectors:

- ◆ critical infrastructure, whether physical or virtual, including infrastructure in the energy, transportation, water, health communications, media, data processing or storage, aerospace, defense, electoral or financial sectors (including the credit and insurance sector), as well as sensitive infrastructure and investments in the land and property that are essential for the use of such infrastructure;
- ◆ critical technology and dual-use goods, including AI, robotics, semiconductors, cybersecurity, aerospace technology, defense, energy storage, quantum and nuclear technology, nanotechnologies and biotechnologies;

¹ Decree-Law no. 21 of 15 March 2012 (converted into Law no. 56 of 11 May 2012) and Decree-Law no. 105 of 21 September 2019 (converted into Law no. 133 of 18 November 2019).

²If the notification is not made, the person in charge will be liable to a heavy fine, the amount of which will depend on different factors that vary with the business sector concerned. The penalty is in some cases up to twofold the value of the transaction (but in any case not lower than one per cent of the turnover realized by the companies involved in the last year for which financial statements have been approved), and in other cases up to 150% of the value of the transaction (but in any case not lower than 25% thereof).

- ◆ security in the supply of critical productive factors, including energy and raw materials, as well as food security;
- ◆ access to sensitive information, including personal data, or the ability to control such information;
- ◆ freedom and plurality of media.

SCOPE OF THE GOLDEN POWERS

Until 31 December 2020, the following shall be subject to the notification obligation:

- ◆ resolutions made or transactions resolved by a company which has, among other things, assets and contracts in any of the above sectors, including the financial, credit and insurance sectors, where such resolutions or transactions result in a change of ownership, control or availability of such assets or their change of intended use;
- ◆ purchases for any reasons of shareholdings in strategic companies:
 - by EU entities, resulting in control of the company in which a shareholding is being acquired, within the meaning of article 2359 of the Civil Code;
 - by non-EU entities, resulting in the acquisition by them of a percentage of voting rights or the share capital of at least 10% (having regard to the shares or non-share investments already directly or indirectly owned by such entities) and with an aggregate value of the investment of 1 million euro or more;
 - as a result of which the 15%, 20%, 25% and 50% percentages of ownership in the company the subject of the acquisition are exceeded.

NOTA BENE

The special powers may be exercised also after 31 December 2020, where the notification was made at a later time or was not submitted, provided that the obligation to do so arose by such date.

In order to determine whether an investment by a foreign company could affect national security or public order, the Government may consider the following circumstances:

- ◆ the purchaser is directly or indirectly controlled by the public authorities, including state organizations or the armed forces, of a non-EU country, by way of ownership or significant loans; until 31 December 2020, the rule applies also when control is exercised by the public authority of an EU Member State;
- ◆ the purchaser has already been involved in activities affecting the security or public order of an EU Member State;
- ◆ there is a serious risk that the purchaser may engage in illegal or criminal activities.

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