

Alert | Corporate



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The Italian ‘Golden Powers’ Legislation: Significant Amendments, Procedural Novelties Follow Implementation of ‘Ukraine Decree’

The Italian government’s intervention powers concerning private investment in companies of strategic national importance (“Golden Powers”) – established by Law Decree 21/2012 – have been significantly expanded since 2020, following the crisis caused by the COVID-19 pandemic (see our [April 2020 GT Alert](#) and [May 2021 GT Alert](#)). The scope of Golden Powers now includes new strategic sectors, other than defense, energy, and communications, such as food, health, financial and credit, as well as transactions performed not only by EU and non-EU entities but also by Italian companies and intra-group transactions.

The Golden Powers regulation has been amended with Law Decree No. 21 of March 21, 2022 (the so-called “Ukraine Decree”), which contains measures in response to the crisis caused by Russian aggression toward Ukraine. The Ukraine Decree has introduced several changes to the Golden Powers screening procedure to address some of the uncertainties that followed the expansion of the Golden Powers. In addition, the Ukraine Decree has made the increased scope of Golden Powers permanent, as the amendments introduced in 2020 due to COVID-19 were originally intended as temporary, and it has further strengthened the government’s powers in specific sectors such as communications and 5G technologies.

The main procedural novelties of the Ukraine Decree require implementation by the Italian government through specific delegated acts. Several of these measures were introduced by Decree of the Presidency of the Council of Ministers no. 133 of 1 August 2022 (the “Decree”), which came into force 24 September 2022.

The main novelties provided for in the Decree are the following:

- i. a **finding of inapplicability** of the Golden Powers regulation can be taken **by the Coordination Group**, a structure formed by delegates of the main Ministries (Home Affairs, Defense, Finance, Justice, Infrastructures, Health and others) and top national security officials, without the need to obtain formal clearance by the Council of Ministers, thus allowing **faster clearance** of notified transactions. The latter can nonetheless be involved in the event of a request, within short terms, by one of the authorities concerned.
- ii. if the transaction is deemed to fall within the scope of the Golden Powers regulation, a **complete assessment** by the relevant Ministry is performed, for which the Decree provides **stringent timelines**. This could lead either to a clearance decision by the Council of Ministers, eventually accompanied by recommendations to the companies concerned, or to the exercise of the special powers;
- iii. a new **“pre-filing” procedure** is established, which allows companies to file with the Presidency of the Council of Ministers a report on the draft transactions they plan to conclude, providing all the information required for the notification available at the time, so as to obtain, **within 30 days** from such pre-filing, **confirmation** on whether the transaction falls outside of the scope of the Golden Powers regulation or that the conditions for the exercise of special powers are manifestly absent (but, in the latter case, recommendation could nonetheless be addressed to the companies concerned). In any case, the Coordination Group could always require a complete filing. The pre-notification procedure does not alter the deadlines envisaged for the complete filing, which remain fully applicable, when relevant.
- iv. finally, the Decree repeals the previous Decree of the Presidency of the Council of Ministers of 6 August 2014, on the activities and procedure for Golden Power notification review, and consolidates the main regulatory changes occurred after its adoption, including, for instance, the **simplified procedure for screening of intra-group transactions**, which would not require the formal approval by the Council of Ministries.

These measures aim to simplify and accelerate the Golden Power screening by the Italian government, in order to address the exponential growth of the number of filings since 2020. In fact, notified transactions rose from about 80 in 2019 to 342 in 2020 and 496 in 2021. The majority of notifications, indeed, ended with a finding of non-applicability of the Golden Power regulation, given the substantial margin of appreciation regarding the prerequisites for its application and the “strategic nature” of the assets concerned.

It remains to be seen whether the new measures, allowing a swifter dialogue with the government’s offices in charge of the Golden Powers screening, will be effective in providing greater certainty for companies performing transactions in Italy.

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