

FDI Guide

Italy

Contact

Gabriella Covino
Gianni & Origoni, Rome
gcovino@gop.it

Francesco Salerno
Gianni & Origoni, Rome
fsalerno@gop.it

Foreword: A specific chapter is dedicated to the new Regulation (EU) 2019/452 of 19 March 2019 creating a framework for the screening of foreign direct investment (FDI) into the European Union through a combination of: (1) mandatory information by the Member State receiving a filing under its FDI regime of all other Member States and the European Commission; and (2) the possibility for the latter to make comments or issue opinions to the former.

	Topic	Explanation/Description of what is expected	Italy
1.	Principle	Describe if the FDI regime is built by exception to a principle of freedom of investment or whether restrictions to transferring funds to and from your country apply generally.	Regime by exception In line with EU law, Italy guarantees the principle of free movement of capital.
2.	Legal regime Authority(ies) in charge	Describe source(s).	The Italian FDI screening rules are set out in several legal acts: <ul style="list-style-type: none">• Law Decree No 21 of 15 March 2012, converted into Law No 56 of 11 May 2012 (the ‘Golden Power Law’), as amended by, inter alia:• Law Decree No 148 of 16 October 2017, converted into Law No 172 of 4 December 2017, extending FDI rules to the high-tech sector;• Law Decree No 22 of 25 March 2019, converted into Law No 41 of 20 May 2019, extending FDI screening to certain transactions in the 5G sector;

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			<ul style="list-style-type: none"> • Law Decree No 105 of 16 October 2019, converted into Law No 133 of 18 November 2019, extending FDI screening to all sectors mentioned by Article 4, paragraph 1 of Regulation (EU) No 2019/452 (new Article 2, paragraph 1-ter), subject to the adoption of implementing decrees (pending the adoption of these implementing decrees, the pre-existing implementing decrees continued to apply); • Law Decree No 23 of 8 April 2020 (the ‘Liquidity Decree’), converted into Law No 40 of 5 June 2020, introducing a temporary regime in the context of the Covid-19 outbreak, which is currently applicable; • Article 10-ter of Law Decree No 137 of 28 October 2020, converted into Law No 176 of 18 December 2020, extending the application of the temporary regime until 30 June 2021; • Article 11-quinquies of Law Decree No 52 of 22 April 2021, converted into Law No 87 of 17 June 2021, extending the application of the temporary regime until 31 December 2021; • Article 17 of Law Decree No 228 of 30 December 2021, converted into Law No 15 of 25 February 2022, extending the application of the temporary regime until 31 December 2022; and • Law Decree No 21 of 21 March 2022, converted into Law No 51 of 20 May 2022 (the ‘2022 Reform’). • The Golden Power Law is also supplemented by the following regulations: • Decree of the President of the Republic No 35 of 19 February 2014, concerning the procedural rules in the military and defence sectors; • Decree of the President of the Republic No 86 of 25 March 2014, concerning the procedural rules in the energy, transportation and communication sectors; • Decree of the President of the Council of the Ministers No 108 of 6 June 2014, setting out the relevant strategic assets in the military and defence sectors; • Decree of the President of the Council of the Ministers of 6 August 2014, concerning the organisation of the activities related to the exercise of the special powers;

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			<ul style="list-style-type: none"> Decree of the President of the Council of the Ministers No 179 of 18 December 2020, setting out the relevant strategic assets in the sectors listed in Article 4 of Regulation (EU) No 2019/452; and Decree of the President of the Council of the Ministers No 180 of 23 December 2020, setting out the relevant strategic assets in the energy, transport and communication sectors.
		Name of authority in charge of applying the FDI rules (Minister/Agency/...).	The Presidency of the Council of Ministers is the authority in charge.
3.	Transactions that may be subject to FDI <ul style="list-style-type: none"> Type Materiality thresholds Rights of evocation 	<p>Describe the nature of the transactions that may be subject to FDI rules.</p> <p>In the case of share acquisition, specify if the FDI regime is triggered only beyond a certain threshold and, if so, describe such a threshold.</p>	<p>The Golden Power rules apply to share deals as follows, depending on the acquiring party (Italian, EU and non-EU)¹:</p> <ol style="list-style-type: none"> Italian investors: <ul style="list-style-type: none"> change of control or change in the availability of the assets in the sectors outlined in the second sentence of Article 2, paragraph 5 of Law Decree No 21/2012, that is, communications, energy, transportation, health, agri-food and finance (including insurance and banking); EU investors: <ul style="list-style-type: none"> change of control or change in the availability of all assets in communications, energy, transportation, health, agri-food and finance (including insurance and banking); and change of control or change in the availability of assets in the relevant sectors listed infra;

¹ A non-EU investor is defined as: (1) any natural person who is not a national of a Member State of the EU, or who is a national of a Member State but does not have his or her habitual residence or principal place of business in the EU; (2) any legal person that does not have its registered office or its principal place of business in a Member State of the EU or of the European Economic Area (EEA), or is not established therein, and subjects, directly or indirectly, controlled by them; (3) any natural person or legal entity regardless of its origin in the case of evidence of circumvention with respect to the application of the rules set out in the FDI laws.

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			<p>3. non-EU investors:</p> <ul style="list-style-type: none"> • change of control or change in the availability of all assets in communications, energy, transportation, health, agri-food and finance (including insurance and banking); • change of control or change in the availability of assets in the relevant sectors listed infra; and • all transactions with a value of more than €1m, leading to the acquisition of more than ten per cent of the shareholdings, also considering the shares already held prior to the transaction. The same obligation applies for transactions increasing the shareholdings above 15 per cent, 20 per cent, 25 per cent or 50 per cent of the target company's shares. <p>More restrictive rules apply as regards the <i>defence and national security sectors</i>, as explained below.</p> <p>Besides transactions, the Italian FDI rules also capture corporate resolutions that may change strategic assets' availability, such as, guarantees or office closures.</p> <p>Finally, as regards 5G, the rules envisage the notification of purchase contacts with non-EU manufacturers.</p>
		<p>Are indirect acquisitions of assets or shares in the jurisdiction subject to the relevant FDI rules (acquisitions in a parent company outside the jurisdiction)?</p> <p>Are share transfers involving a group company internal restructuring covered?</p> <p>Are greenfield investments covered?</p>	<p>The Golden Power rules include indirect acquisitions.</p> <p>The Golden Power rules may apply to internal restructuring under certain conditions; however, for these transactions, notification is essentially for information purposes only – no exercise of special powers is foreseen (except in extreme cases of threat to national interests).</p> <p>Greenfield investments are typically not covered, but case-by-case analysis may be necessary, depending on the type of assets and size of the investment.</p>

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		Does the FDI authority (or another type of governmental authority) have a power of evocation/ex officio/call-in powers? If so, please describe.	Italian authorities have ex officio investigation power.
4.	Sectors falling under the FDI scope	<p>Describe the economic sectors for which the FDI regime will apply. If relevant, explain for each sector the level of flexibility that the authority may apply (or not) in evaluating whether FDI rules should apply.</p> <p>Are there sector-specific stricter limits on foreign investment that will apply, such as a lower threshold of investment by foreign interests or sectors for which no foreign investment is possible? If yes, which sectors (eg, nuclear energy/agriculture)?</p>	<p>The following sectors and activities fall within the scope of the Golden Power rules:</p> <ul style="list-style-type: none"> • communications, energy and transport; • critical infrastructure, whether physical or virtual, including energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure; • 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, and quantum and nuclear technology, as well as nanotechnology and biotechnology; • supply of critical inputs, including energy or raw materials, as well as food security and access to sensitive information, including personal data, or the ability to control such information; • freedom and pluralism of the media; • credit and insurance; • agri-food; and • steelmaking. <p>For national defence and security, stricter limits apply, that is, transactions that bring the investor's shareholding above three per cent, five per cent, ten per cent, 20 per cent, 25 per cent and 50 per cent, including by Italian acquirers.</p>

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5.	Qualified investors	Describe the main characteristics of investors that fall under the FDI regime and if there are nuances depending on their origin (eg, EU v not EU).	The main difference is between EU and non-EU investors, with the latter being subject to filing obligations, even in the case of acquisition of non-controlling stakes, while the former are called to notify transactions leading to the acquisition of control.
6.	Procedure 6.1 Before or post-closing filing		Notification should be sent before closing.
7.	6.2 In the case of pre-closing filing	Mandatory/optional filing	<i>It is mandatory</i> to file a request for clearance before the completion of the investment within the scope of the FDI rules. Foreign investment clearance is normally a condition precedent to the completion of the transaction.
8.	6.3 In the case of post-closing, what are the powers of the authority?		Not applicable (pre-filing is mandatory).
9.	6.4 Advance ruling	Explain if it is possible to obtain a pre-ruling from the authority as to whether the transaction falls under the FDI rules and, as the case may be, describe the process to be followed.	Recent provisions envisage a pre-notification procedure. However, implementing rules have not been issued yet.
10.	6.5 Timing of various steps (i) Filing	How much lead time is required?	A standard filing takes five to seven working days.

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11.	(ii) Review by the authority	Specify the timing available to the authority; indicate if the timeframe is mandatory or not and describe what other flexibility may exist de facto or <i>de jure</i> .	<p>Forty-five working days from a complete notification. This time limit is mandatory. The 45-working-day time limit may be subject to suspension:</p> <ul style="list-style-type: none"> • If it is necessary to request information from the company or a third party, the term is suspended, only once, and information must be provided by the company within ten days and by the third party within 20 days. • In the event of incomplete notification, the time limit of 45 working days provided for in Golden Power legislation shall run from the receipt of information or elements supplementing it. • In the area of 5G technology, the President of the Council of Ministers must issue a decision within 30 days of notification.
12.	(iii) Negotiation with the authority	Describe how to handle the relationship with the authority, including when approval is subject to commitments from, or conditions imposed on, the investor.	There is limited ability to engage with the authority after filing, even when commitments are possible.
		Are there any guidelines issued by the authority?	No guidelines have been provided and decisions are not published. An annual report to Parliament describes the exercise of FDI powers.
13.	(iv) Filing fees	Is there a filing fee?	There is no filing fee.
14.	(v) Information needed for filing	What information about the investor is required? Are there any thresholds for the identity and nationality of minority passive shareholders? Information on other FDI approvals by other authorities?	<p>Notification must contain detailed information on the transaction, the deal and the business objectives pursued through the transaction. In particular, a filing should include:</p> <ul style="list-style-type: none"> • information about the investor and the target; • the economic activities carried out and the European countries in which the companies carry out the activities, including through branch offices; • the annual net turnover of the companies, and of the group to which they belong, in euros, referring to the last fiscal year;

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			<ul style="list-style-type: none"> • the average annual and total number of employees of the companies, and of the group to which they belong; • a description of the ownership structure and shareholdings, up to ultimate beneficial owners; • any stock exchange listing; and • any EU financial sanctions.
15.	(vi) Final decision	Indicate if the final decision is to be issued within a set timeframe and what are the consequences if the authority does not issue a decision within the set timeframe.	The decision must be issued within 45 working days from a complete notification. If the time limit expires without a decision by the authorities, the transaction can be implemented.
16.	Conditionality of approval (i) Type of conditions or commitments	Describe the type of conditions or commitments to which FDI approval may be subject. Specify their usual duration. Specify what powers the authority may exercise to control/monitor the satisfaction of such conditions/commitments.	The Italian authorities have cleared transactions by imposing commitments, including: <ul style="list-style-type: none"> • the sale of certain parts of a company; • ensuring that R&D activities, know-how and property rights remains in Italy; • appointing public bodies to monitor the production and supply of certain products and services; • reporting obligations, such as communicating major strategic decisions in advance to a committee that would verify whether such decisions are a threat to national interests; and • maintaining employment and increasing investment in strategic activities located in Italy.
17.	(ii) Level of discretionary power of the authority	Indicate if it exists and, if so, describe exceptional circumstances that have led to the use of such discretionary power.	While enjoying discretion, the authority must respect the principles of proportionality. Furthermore, the decision can be appealed before the administrative court. In the <i>Syngenta case</i> (2020), the Council of State qualified the government’s decision on the exercise of special powers as a decision of high administration, indicating that judicial review is limited to manifest errors.

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18.	(iii) Risk of veto	Describe a topical case. Statistics	<p>The authorities may veto a transaction only in exceptional cases. Overall, the vast majority of cases are approved without conditions, while in some cases, it is necessary to impose mitigation measures.</p> <p>The use of the veto is rare. Up to the beginning of 2022, the veto had only been used six times.</p> <p>However, in 2021, there was a significant uptick in government intervention: special powers were exercised 26 times, and three times in the form of a veto. Most recently, on 8 June 2022, the Italian Government vetoed the acquisition of Italian robot maker Robox by Chinese conglomerate Efort.</p>
19.	Role of other national authorities	Indicate if other authorities or administrations (eg, Army or Defence Minister) can get involved and, if so, how (by the authority or otherwise) and how much influence it may exercise.	Once it receives notification, the Presidency of the Council of Ministers forwards it to the competent Ministries to gather their non-binding opinion. In some cases, independent regulators have been called to provide an opinion. The final decision rests, however, with the President of the Council.
20.	Sanctions	Describe the type of sanctions that may be imposed by the authority in the case of:	
		<ul style="list-style-type: none"> breach of conditions and/or commitments attached to the approval; and 	<p>Resolutions or acts adopted in breach of conditions and/or commitments are null and void.</p> <p>In addition, there are fines for breach of conditions/commitments: up to twice the value of the transaction and, in any case, not less than one per cent of the combined annual turnover of the undertakings concerned.</p>
		<ul style="list-style-type: none"> investment carried out without prior approval. 	<p>Resolutions or acts adopted prior to a final decision are null and void.</p> <p>Furthermore, the authority may order the offending party to restore the previous situation at its own expense.</p> <p>There are fines for failure to notify: up to twice the value of the transaction and, in any case, not less than one per cent of the combined annual turnover of the undertakings concerned.</p>

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21.	Covid – special regime	Please describe specific rules applicable as a result of the Covid-19 pandemic.	<p>Italy introduced an emergency regime, which has been extended several times.</p> <p>One of the main changes under this regime was the obligation for EU operators to notify transactions involving the acquisition of control in companies that hold strategic assets.</p> <p>Another significant change was the obligation for non-EU operators to notify the authorities of all transactions with a value of more than EUR 1m, leading to the acquisition of more than ten per cent of shareholdings, also considering the shares already held prior to the transaction. The same obligation is applied for subsequent transactions that increase the shareholdings above 15 per cent, 20 per cent, 25 per cent or 50 per cent of the target company's shares.</p> <p>The emergency regime will end by 31 December 2022. However, as noted, some rules under the emergency regime were made permanent.</p>