NORTON ROSE FULBRIGHT

COVID-19 crisis inspires global tightening of Foreign Investment Screening

Italy

Italy was the first country in Europe to be severely hit by the COVID-19 outbreak. The Italian response to the crisis includes measures to safeguard strategic sectors of the Italian economy, in particular through the so-called "Liquidity Decree" (Law Decree No. 23 of 8 April 2020), which amended the existing Italian foreign investment regime, broadening the government's powers to restrict investments by foreign entities in certain strategic sectors.

Under the existing Italian foreign investment regime (set forth in Law Decree No. 21 of 15 March 2012, as amended, and in several implementing measures), the Italian government has the power to impose conditions on, or even veto, investments by foreign persons in Italian companies and assets in strategic sectors when such investment may jeopardize the national security or other public interests. In addition, certain actions by companies in strategic sectors require notification before they can be implemented.

Before the adoption of the Liquidity Decree, the list of strategic sectors included defense and national security, energy, transport and communication, 5G technologies and other high-tech activities. The Liquidity Decree expands the government's powers by:

- Extending the regime to new sectors, including the financial, credit and insurance sectors and the sectors listed in Article 4 Paragraph 1 of EU Regulation 2019/452, the EU FDI screening regulation. The government is already entitled to exercise its powers in these new sectors, but it is required to adopt new regulations to identify in greater detail the specific assets and activities falling within these categories.
- Enabling the government to review transactions on its own initiative if the parties fail to notify the transaction.
- Until December 31, 2020, extending the scope of transactions subject to government scrutiny to: (i) any acquisition by EU entities of controlling interests in any strategic sector (screening of acquisitions by EU entities was previously limited to the defense and national security sectors) and (ii) with respect to any strategic sector, acquisitions by non-EU entities of voting rights in excess of certain thresholds (10 percent, 15 percent, 20 percent, 25 percent and 50 percent) with a value in excess of €1 million.

Along with these changes affecting foreign investments, to detect potential takeovers of Italian-listed companies, the Liquidity Decree enabled Consob (the Italian securities commission) to temporarily lower the threshold for the disclosure of significant shareholdings. Consob promptly used these powers to lower (i) the minimum threshold triggering the obligation to disclose significant shareholdings to 1 percent and 3 percent for certain large issuers and SMEs, respectively, and (ii) the minimum threshold triggering the obligation to disclose the objectives that an investor intends to pursue to 5 percent. Both measures apply only until July 11, 2020 and in respect of holdings in companies included in a list of 104 Italian listed issuers in various industries in which no shareholder owns a majority of the share capital and that are therefore exposed to hostile takeovers.

By **Claudio Di Falco**