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RESTRICTIONS TO FOREIGN DIRECT INVESTMENTS

New Protective Measures against Predatory Acquisitions as set forth in the April 8, 2020 «Liquidity Decree»

Gitti and Partners - Studio Legale Associato

The EU Framework

- EU Regulation 2019/452 establishes a framework for the screening by Member States of foreign direct investments ("FDI") into the Union on the grounds of security or public order (the Regulation is not yet applicable);
- On March 26 the European Commission called upon Member States to make full use of their FDI screening mechanisms to protect critical health infrastructures and supply of critical inputs;
- Other countries (e.g. Spain, France, Australia, Germany and the United States) are also taking similar protective measures;

Italy: the April 8, 2020 "Liquidity Decree"

- The Italian "Liquidity Decree" has set forth a stronger protection against FDIs to protect national strategic sectors from predatory acquisitions.
- Sectors in scope include:
  - (a) 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;
  - (b) **critical technologies** and **dual use items**, including nanotechnologies and **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.

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The obligation to notify the Italian government...

- Is triggered by:
  - Any resolution or deed affecting title, control on, availability or destination of such resources;
  - Any acquisition of control by any foreign purchaser (also EU!);
  - Any acquisition by an extra-EU purchaser of a 10% share where the value of the investment is above 1 million, or of shares exceeding 15%, 20%, 25% and 50% of the target;

The obligation to notify the Consob for listed companies

As per the “Liquidity Decree”, in the interest of transparency of the stakeholdings of the listed companies and in order to avoid hostile take overs and speculative activities over their shares, Consob (Italian stock exchange regulatory authority) is entitled to require notification in case of acquisition of

- interests of 1% of the share capital of listed companies (3% for SMEs);
- interests exceeding 5% of the share capital of private, or listed on MTF, companies with materially spread shareholding structure;

Potential restrictions and sanctions

- Within 45 days from the notification the transaction can be blocked or conditioned;
- In absence of notification:
  - administrative sanction equal to twice the value of the transaction, but in no event lower than 1% of the aggregate turnover of the companies involved;
  - the transaction is null and void;
- In absence of notification to Consob:
  - Administrative sanctions in the range of Euro 10k to 10 mln or, where higher, 5% of the aggregate turnover of the party who failed to notify;

- Questions?
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