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The new extension of the Italian golden powers A “Never Ending” Story?

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Certain significant restrictions introduced in the Italian FDI regulation in Covid-19 time have been extended till December 2022 by Article 17 of Law-Decree no. 228 of December 30, 2021. This implies that, at least until 31 December 2022, in order to counter the epidemic emergency caused by the spread of the Covid-19 virus and contain its negative impacts, the obligation of notification applies to resolutions, acts or transactions, adopted by an entity that holds assets and undertakings in the sectors referred to in Article 4, paragraph 1, letters a), b), c), d) and e) of Regulation (EU) 2019/452 (including credit and insurance sectors within the financial segment) resulting in changes in the ownership, control or availability of such assets or in a modification of their use.

Furthermore, for the same period, the obligation of notification, in certain strategic sectors, also applies (i) to the acquisition of shareholdings, for any reason or cause, carried out by foreign entities, also including EU entities, which results in a permanent establishment of the purchaser because of the acquisition of control of the company; as well as (ii) to the acquisition of shareholdings, by foreign not-EU entities, which attribute a stake equal to at least 10 per cent of the voting rights or of the corporate capital, taking into account the shares or quotas already directly or indirectly owned, when the total value of the investment is equal to or greater than EUR one million; and, moreover, (iii) to acquisitions exceeding of the thresholds of 15 per cent, 20 per cent, 25 per cent and 50 per cent of the corporate capital.

Such provisions raise several issues, which can be briefly outlined as follows. On the one hand, the extension of a further 12 months seems partially unrelated to the evolution of the pandemic and confirms the risk of a possible return of state interventionism. On the other hand, the inclusion of European bidders among those potentially subject to the Italian FDI screening mechanisms could be seriously scrutinized under the applicable EU principles in times in which the pandemic impact is not as unpredictable as in the recent past. Nonetheless, the recent regulatory initiative revolves around only the temporal element, and neglects to solve other critical issues – already brought up by scholars and practitioners – which lead to an excessive use of the notification obligation.

The above recalls a well-known statement in Italy: “*sometimes nothing is more definitive than the provisional!*” (“*talvolta non c'è nulla di più definitivo del provvisorio!*”).