

Italian government approves new rules on foreign investment in strategic sectors

March 14 2012

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On March 9 the Italian Government approved a Law Decree setting forth for the first time a broad set of governmental intervention and veto powers in certain strategic sectors: **defense**; **energy**; **transportation**; **communications**.

This new set of rules will have a **significant impact** on companies operating in such sectors. In particular, the new rules include specific governmental powers to **veto corporate transactions** in certain cases.

The new rules are already in force, but are subject to confirmation (or amendment) by the Parliament within 60 days.

The current text will require implementing regulation, case law, rulings, etc. to fill many gaps: it will be necessary to clarify the filing procedure; whether and how the government's decisions are subject to judicial review; a precise definition of the scope of the affected sectors, etc.

Such new rules may affect any transaction not yet closed in the relevant sectors.

This alert is based on an unofficial version of the Law Decree (which has not yet been published).

Defense Sector Restrictions

The new governmental powers are more extensive in the context of corporate transactions in the defense sector. For example, the government may impose restrictions to technology transfers, export, protection of secrets in the defense sector corporate transactions or may veto such transactions altogether.

Additional implementation decrees will lay further details such as a more precise identification of the scope of the industries included in the “defense” sector, etc.

Energy, Transportation, and Communications Sectors

The government will issue implementing decrees to identify “the networks, infrastructure, assets and relationships” to be deemed of a strategic relevance in the energy, transportation and communications sectors.

Filing Obligations, Timing of Approval

Parties will need to notify to the government any corporate transactions (as well as financing transactions creating liens, mortgages, etc.) affecting assets in any of the strategic sectors included in the scope of the new rules.

The government may veto or approve the transaction or impose specific conditions within 15 days (which may be extended for a short term to obtain further information).

Scope of Veto Powers

The new rules lay down some guidelines and parameters to be applied by the government to assess whether to exercise said powers. Generally speaking, the government may veto the transaction or impose conditions if the transaction may prejudice national security (for defense sector transactions) or the security/reliability or networks.

Sanctions

Failure to make the required filing with the Government is subject to a fine up to **twice the transaction value and in any event at least 1% of the aggregate turnover of the businesses involved in the transaction.**