MAIN DEVELOPMENTS ON ITALIAN FDI AND AN OVERVIEW OF THE UE FRAMEWORK

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INTRODUCTION

The Italian regime on the control of foreign investments — the so-called "Golden Power" — went through several significant developments in recent months. Below is a brief overview of the main developments, with particular focus on those likely to have a significant impact on businesses and the management of M&A transactions. Section II will examine some new elements of the European framework, starting with the revision of the EU Regulation on the control of foreign direct investment, which is currently underway.

I. RECENT DEVELOPMENTS ON ITALIAN FDI LAW

1. Structural remedies and preventive divestments of strategic assets

Unlike in the antitrust field, where competition authorities frequently rely on structural remedies to address competition concerns arising from a certain transaction (such as the divestiture of assets or shareholdings), in the area of Golden Power – legislation safeguarding public order and national security – the requirements and conditions adopted in Italy have traditionally been behavioural in nature, including, for example, obligations to retain key assets or technologies within Italy, restrictions on access to certain sensitive information, and the appointment of Italian nationals to key positions within the acquired company.

However, the recent case involving Tinexta S.p.A., a company operating in the digital sector, which was the subject of a takeover bid by the US fund Advent together with Nextalia, represents a first significant step towards structural remedies. The Prime Minister's Office made its authorisation of the acquisition conditional upon the transfer of the defence-sector business to a newly established blind trust, with subsequent sale to a third-party buyer subject to government approval.

This precedent marks a major development in the types of remedies that companies can expect. Indeed, for transactions involving companies that hold strategic assets in critical sectors, it is important that contracts negotiated as part of M&A transactions expressly provide for the possibility of structural remedies and the related consequences for the transaction.

It is also worth noting the case involving Iveco Group, which was the subject of a takeover bid by Tata Motors. In that case, the assets relating to Iveco Defence were sold prior to the completion of the takeover to Leonardo, a State-owned company active in the defence sector. The sale of the defence-related business unit did not take place ex post, as a condition imposed by the Presidency, but ex ante, on the seller's initiative, with the aim of facilitating the FDI approval process and ensuring the certainty of the transaction.

2. The far-reaching nature of Golden Power. Not just acquisitions: controls over shareholders' agreements and outbound transfer of technology

On 9 April 2026, the Council of Ministers exercised its special powers over Pirelli, with the aim of protecting the group's strategic technologies and significantly limiting the influence its major Chinese shareholder, an entity part of the Sinochem group.

The measure stems from the notification submitted by the shareholders and the company regarding the renewal of the shareholders' agreement with the Chinese partner, due to expire on 18 May 2026.

Specifically, the Prime Minister's Office required Sinochem, which holds around 34% of Pirelli's shares, to submit a list of up to three candidates for the Board of Directors, two of whom must be independent, with a prohibition on such individuals holding senior corporate positions. Several requirements have also been imposed regarding the prohibition on sharing sensitive company information, the autonomy of management and administrative information systems and, more generally, restrictions on 'non-interference' by the Chinese shareholder in Pirelli's strategic

activities. These prohibitions will remain in force for as long as the Chinese company retains a stake in Pirelli's share capital exceeding 9.99%.

This was the second intervention of the Prime Minister's Office regarding Pirelli. The first dates back to June 2023, when ChemChina, Camfin's original shareholder, merged with Sinochem.

The development demonstrates how the "special powers" can be imposed not only in the context of mergers and acquisitions but also at the time of signing or renewing shareholder agreements, as a mechanism for redefining internal powers.

Another case worth noting that deviates from the 'standard' scope of application of the Golden Power provisions is that of the Manta Aircraft joint venture. In judgment No. 2180/2026, published on 16 March 2026, the Council of State upheld the veto imposed by the Government at the end of 2024 on the project between the Italian start-up Manta Aircraft and the Chinese company Shenyang Aviation Industry Group Co. Ltd. (SAIG), concerning the establishment in China of a joint venture, owned by Manta Aircraft and SAIG themselves, aimed at financing the development and construction of two civilian prototypes of an aircraft intended for passenger transport.

The case revolves around the transfer of technology and know-how abroad, over which the Government may have a say, by virtue of its jurisdiction over corporate transactions involving strategic assets or technologies.

In this case, the Government deemed the start-up to be of strategic importance, and the transaction relevant to national security and defence and blocked, as a precautionary measure and in accordance with the principle of maximum caution, a plan to share certain know-how with a Chinese investor controlled by the State.

3. Developments in case law regarding pledges over shares

One of the distinctive features of the Golden Power regime is the obligation to notify the creation of a security interest in a strategic asset where such security affects the 'control' or 'availability' of the asset. Similarly, a pledge over the shares of a strategic company has traditionally been treated as a security interest subject to a notification requirement.

However, it was unclear whether notification should be made at the time the security was created or only at the time of its eventual enforcement. In this context, the Regional Administrative Court (TAR) in its judgment in the Cedacri case of May 2024[1], in line with the practice of the Presidency of the Council of Ministers, had ruled that notification must be made at the time the security interest is granted (and also at the time of any extension thereof), considering that a review by the Presidency initiated only at the time of enforcement might not be timely.

In December 2025, however, the Council of State[2] overturned the TAR ruling, establishing that, for the purposes of the notification requirement, the relevant criterion is to determine whether the security interest results, at the time of its creation, in an actual transfer of control over the asset. In the case of a pledge over shares, if the voting rights remain with the shareholder until a default event occurs and enforcement is subject to Golden Power's authorisation, there is no change in control, and therefore no obligation to make a prior notification. Conversely, if voting rights are transferred to the secured creditor at the time the pledge is created, notification must be made immediately

The ruling, by providing clarification regarding pledges on shares, may lead to a reduction in the number of notifications, simplifying the analysis and helping to speed up the completion of financing transactions.

1 Regional Administrative Court of Lazio, Rome, Section I, Judgment (hearing date: 21 February 2024), 22 May 2024, No. 10275.
2 Council of State, Section IV, Judgment, (hearing date 06/02/2025) 05/12/2025, No. 9619.

4. The European Commission’s infringement procedure in the financial sector

n November 2024, UniCredit launched a takeover bid for Banco BPM, subject to the granting of various regulatory approvals, including approval by the European Commission under the EU Merger Regulation[3], authorisation by the European Central Bank in the context of prudential supervision, and by the Italian Government under the Golden Power legislation.

The Presidency of the Council of Ministers exercised its special powers by authorising the transaction in April 2025, imposing significant conditions (primarily to the bank resulting from the merger) including i) the obligation not to alter, for a period of five years, the ratio of loans to deposits; ii) the obligation not to reduce the level of the current project finance portfolio; iii) the obligation, for a period of five years, to support the development of Anima Holding S.p.A. (a subsidiary of Banco BPM) and not to reduce the current share of investments in Italian issuers; iv) the obligation for UniCredit to cease, within nine months, all its activities in Russia.

UniCredit challenged the decision before the Regional Administrative Court (TAR), arguing, amongst other things, that the Golden Power legislation provides only for the possibility of intervention in relation to transactions that threaten public security and national public order, and not for economic reasons.

The Regional Administrative Court, in judgment no. 13748 of 12 July 2025[4], whilst annulling two of the imposed requirements, recognised the overall legitimacy of the intervention, stating, inter alia, that economic security— invoked by the Government to justify the conditions imposed—can be traced back to the broader notion of public security, and is therefore a possible lawful basis for the exercise of special powers.

At the same time, the European Commission challenged the Italian government’s decision on two separate grounds. Firstly, in the context of the proceedings under Article 21 of the EU Merger Regulation, taken the (provisional) view that the conditions imposed on UniCredit/BPM could not be justified by any of the exceptions provided for in Article 21(4) of the Regulation, including ‘public security’ as defined by the case law of the Court of Justice of the European Union, which requires a genuine and sufficiently serious threat to a fundamental interest of society. Under these rules, the Commission has exclusive competence to examine concentrations with an EU dimension and the power of Member States to adopt measures to protect legitimate national interests other than competition are limited to exceptional circumstances and subject to specific substantive and procedural conditions.
To date, however, the Commission has not formally challenged the decision by the Italian Government on the basis of the EU Merger Regulation.

Separately, in November 2025, the Commission started an infringement procedure under Article 258 TFEU, challenging the Italian Government’s application of the Golden Power legislation in the banking sector. In its letter of formal notice, the Commission took the preliminary view that Italy had infringed the Single Supervisory Mechanism Regulation (“SSM”), the Capital Requirements Directive (“CRD IV”) and Articles 49 (freedom of establishment) and 63 (free movement of capital) of the TFEU.

In particular, the Commission preliminary considered that the conditions imposed by the Italian Government had a negative impact on the ability and willingness of UniCredit and BPM shareholders to participate in the transaction, thereby having a dissuasive effect on cross-border investment, in breach of the rules on free movement of capital under Article 63 TFEU. In addition, the Commission considered that the requirement relating to investments in Italian issuers, in so far as it could restrict the management of assets by Anima Holding S.p.A. by acquiring controlling stakes in companies located in other Member States, also constituted a restriction on the freedom of establishment under Article 49 TFEU, not justified by a genuine and sufficiently serious threat to public policy, public security or a fundamental interest of society.

3 Regulation (EC) No 139/2004.
4 Regional Administrative Court of Lazio, Rome, Section I, Judgment, 12 July 2025, No. 13748.

Italy replied to these objections at the end of January 2026, setting out the regulatory changes made in the banking sector (detailed below). The European Commission is currently assessing whether to close the infringement procedure or issuing a reasoned opinion and to refer the case to the Court of Justice.

In the meantime, in July 2025, UniCredit decided to withdraw from the transaction.

5. Changes to the Golden Power regime in the financial sector

In response to the infringement procedure initiated by the European Commission, and with the aim of bringing the infringement procedure to an end, Italy introduced certain amendments to the Golden Power law[5], The main changes are the following:

- if a transaction is subject to authorisation by the European Commission for the purposes of merger control and/or by the ECB for prudential purposes, the Italian Government may not conclude its Golden Power review and exercise its powers until the review by those EU institutions has been completed;
- • the possibility for the Government to consider, as a relevant criterion for exercising its special powers, the notion of 'national economic and financial security' (provided that the protection of the State's essential interests is not adequately ensured by EU regulatory reviews).

In practice, this framework could lead to a significant delay in the timeline of certain transactions in the financial sector, as it is no longer possible for the Italian Golden Power procedure to run in parallel with the ECB and the European Commission screening review, in the case of a merger meeting the EU turnover thresholds.

Secondly, the (express) introduction of the concept of "economic and financial security" confirms the Government's intention to exercise full oversight over banking and financial transactions, including infra-EU transactions (and even purely domestic ones). It remains to be seen whether these changes will be deemed sufficient and suitable to meet the concerns expressed by the European Commission in the context of the infringement procedure.

II. OVERVIEW OF THE EUROPEAN FRAMEWORK

1. The revision of (EU) Regulation No. 452/2019

On 24 January 2024, the European Commission published a Communication entitled 'Advancing European economic security', introducing five new initiatives, including the proposal to revise Regulation 2019/452 on the screening of foreign direct investments (FDI). The new Regulation is expected to be formally adopted by the European Parliament and the Council in the second half of 2026; Member States will then have 18 months to align their national regimes with the minimum requirements set out by EU law.

a) Screening obligation and minimum common scope

The Regulation aims to strengthen the European Union's ability to identify, assess and manage the risks posed by certain foreign investments, whilst preserving openness to global trade and investment. The new framework makes it mandatory for all Member States to establish FDI screening mechanisms with a common minimum scope, including: dual-use goods and military equipment; 'hyper-critical' technologies such as artificial intelligence (aligned with the definitions of the EU AI Act and focused on AI for space and defence applications), quantum technologies and semiconductors; critical raw materials; critical infrastructure in the energy, transport and digital sectors; electoral infrastructure; as well as a limited category of entities in the financial sector, limited to central counterparties, central securities depositories, operators of regulated markets, payment system operators (excluding central banks) and systemically important institutions.

5 Law No. 4 of 15 January 2026. was published in the Official Journal on 21 January 2026, converting Decree-Law No 175 of 21 November 2025; During the conversion process, Article 2-bis was introduced, concerning amendments relating to Golden Power (Decree-Law No. 21/2012).

b) Enhanced cooperation and the role of the European Commission

The Regulation confirms that screening decisions remain the exclusive competence of the Member State in whose territory the investment is made, which retains full power to authorise, impose conditions on or prohibit an investment. The revised legislation preserves this principle, whilst improving coordination between national authorities and the Commission.

The Commission's role will also be expanded: a Member State is required to notify the Commission of an investment where (a) the investment falls within the mandatory scope and (b) at least one of the following risk factors applies and in particular where the investor:

- is directly or indirectly controlled by a third country government;
- is subject to EU restrictive measures (sanctions);
- has previously been involved in an investment that was blocked or authorised subject to mitigation measures, which were subsequently significantly disregarded or repeatedly breached.

The Commission's opinion on a specific national case will be highly significant: the competent Member State authority must take due account of the Commission's opinion and the comments of other Member States, providing within 7 days of the decision the operative part and a summary of the reasons, indicating the degree of consideration given to the Commission's opinion and the reasons for any disagreement.

c) Call-in powers and procedural alignment

The Regulation imposes an obligation on all Member States to provide for a 45-day Phase I period (from acceptance of the filing of the notification), requiring notifying parties to endeavour to submit notifications concerning foreign direct investments simultaneously where these are required in more than one Member State, and requiring the respective authorities to coordinate on timelines and remedies.

Member States will also be required to introduce call-in powers, i.e. the power of national authorities to initiate ex officio screening of investments that have already been carried out, even in the absence of prior notification. In particular, national authorities may initiate a review for a minimum period of 15 months and up to a maximum of 5 years from the closing date, where they have reasonable grounds to believe that the investment may affect national security or public order.

The introduction of this obligation represents a significant change for those Member States that do not currently have a call-in power, such as France, Italy and the Netherlands.

2. The Draft EU Accelerator and the new restrictions on foreign investment in strategic sectors

2.1 The context and rationale for the measure

In this context, it is also worth noting the proposed 'Industrial Accelerator Act' Regulation"[6] (hereinafter also 'the Act'), which introduces additional controls on foreign investment in emerging strategic sectors, particularly those linked to the green transition.

The geopolitical and economic context justifying this initiative is that outlined in the Draghi Report: the EU's manufacturing share of total GDP has fallen from 17.4% in 2000 to 14.3% in 2024, with China controlling over 80% of global production capacity for batteries and solar panels. The Act aims to reverse this trend by setting a target for the EU's manufacturing sector to account for at least 20% of GDP by 2035 and by seeking to restore the EU role in certain sectors key to the global economy.

6 Proposal for a Regulation of the European Parliament and of the Council, COM (2026)100, of 4 March 2026, "Industrial Accelerator Act".

2.2 Scope: the investments concerned

The Act aims to support the EU's industrial capacity and decarbonisation, including a series of measures such as accelerating authorisation procedures for industrial projects; creating reference markets for low-carbon strategic products through public procurement and support schemes; and designating industrial manufacturing acceleration zones.

The Act also introduces new notification requirements, stipulating that, for greenfield and brownfield investments in emerging strategic sectors, the foreign investor must notify the competent authority of the Member State in which the target company or EU asset is located in advance. The regime applies to investments made by investors from foreign countries that hold more than 40% of global production capacity in the sector concerned. Although no country is explicitly named, China would appear to be the most affected in practice.

The four emerging strategic sectors covered by the Act are:

- battery technologies and related supply chains for energy storage systems;
- pure electric vehicles, plug-in hybrid vehicles and fuel cell vehicles, including components related to electrification and digitalisation;
- photovoltaic technologies;
- extraction, processing and recycling of critical raw materials.

The investment threshold is set at €100 million, where the investor acquires either control of an EU target or asset, or a stake of at least 30% or more of the share capital, voting rights or ownership.

2.3 The review mechanism and conditions to be met: the six 'requirements'

The Act introduces a differentiated review based on the size of the investment::

- for investments of €1 billion or more, the European Commission has the power, on its own initiative, to conduct the review of the investment directly;
- for investments between €100 million and €1 billion, the Commission plays an advisory role vis-à-vis the competent national authorities, which retain decision-making responsibility, subject to the possibility for the Commission to take over the case where there is a significant impact on the Union.

Where the above thresholds are exceeded, the Act requires the foreign investor to demonstrate that at least four of the six conditions set out have been met, one of which — the requirement relating to the European workforce (Condition 5) — is mandatory in all cases

The six conditions are:

1. **Ownership cap**: foreign investors may not acquire, hold or exercise ownership interests exceeding 49% of the EU company or asset.
2. **Joint venture structure**: investments must be structured as joint ventures with European partners, with a maximum stake of 49% for the foreign investor.
3. **Sharing of IP and know-how**: investors must licence their intellectual property and share their know-how with the EU company; jointly developed intellectual property is jointly owned.
4. **Investment in R&D**: investors must commit to allocating at least 1% of their share of the gross annual turnover generated by the Target or the EU asset to research and development within the EU.
5. **EU workforce (mandatory)**: at least 50% of the workforce at all levels — operational, technical, supervisory and managerial — must consist of European workers, both at the time the investment is implemented and on an ongoing basis throughout its operation.
6. **EU inputs**: a strategy for strengthening EU value chains must be published on the foreign investor's website, and priority must be given to sourcing inputs from within the EU, with the aim of achieving at least 30% European inputs in products placed on the EU market.

2.4 The relationship with the FDI Regulation and possible penalties

The new regime will apply in parallel with the Regulation on foreign direct investment (as well as the Foreign Subsidies Regulation and the EU Merger Regulation). In practice, investors in emerging strategic sectors will face parallel regimes.

The penalties for non-compliance are significant: the competent authorities may impose fines of at least 5% of the foreign investor's average daily aggregate turnover (or 5% of the investment value for individual investors) in the event of failure to notify. The Commission may also impose penalties of up to 5% of average daily turnover if investors provide false or misleading information.

2.5 Next steps

As a proposal, the draft must go through the full EU legislative process, including consultations with stakeholders and scrutiny by the European Parliament and the Council, before formal adoption by the Commission. The Cypriot Presidency of the Council intends to present a first draft of the Council's position before the summer. Investors should therefore expect a consultation period and a possible review of the most contentious points during the legislative process.

3. Outbound investments

On 15 January 2025, the European Commission adopted Recommendation (EU) 2025/63 on outbound investments[7], calling on Member States to monitor the flows of capital, assets and intellectual property directed by EU operators towards third countries in three critical technology sectors – semiconductors, artificial intelligence and quantum technologies – in order to prevent the risk of 'technology leakage', i.e. the loss of know-how relating to strategic advanced technologies, which could be used by third parties for military purposes or to undermine public security.

As early as January 2024, in its White Paper on outbound investments , the Commission had noted the lack, at both European and national levels, of an adequate understanding of such risks and the insufficiency of appropriate tools to counter them effectively.

The Recommendation does not identify specific third countries at risk nor, at present, does it provide for powers to block transactions: its primary objective is the collection of data and the establishment of a shared knowledge base, with a view to possible binding measures.

At present, therefore, the European framework remains in an interim phase, leaving it to Member States to choose the implementing instruments, including the application of those already in place (see, for example, in the context of the Golden Power, the recent case of the Mantra Aircraft joint venture described above).

7 Recommendation (EU) 2025/63 on outbound investment, of 15 January 2025.

III. CONCLUSIONS

The landscape of the regulatory framework governing foreign investment control, both in Italy and at European level, is evolving rapidly, with developments proceeding in parallel on several areas.

At Italian level, on the one hand, the Council of State's case law on share pledges has provided greater clarity for operators; on the other, the Tinexta and Unicredit-Banco BPM cases have set unprecedented precedents regarding remedies and the tension between the Golden Power regime and EU law, respectively. Recent legislative changes in the financial sector, whilst representing an attempt to respond to European challenges, introduce procedural complexities and raise concerns regarding their effectiveness in addressing the infringement procedure initiated by the European Commission against Italy. More generally, the Golden Power regime appears to extend far beyond the traditional scope of investment control, through the regulation of so-called intra-corporate acts and, more broadly, the governance of companies operating in strategic sectors.

At European level, the provisional agreement on the revision of the FDI Regulation marks a decisive step towards greater harmonisation, making screening mandatory for all Member States and strengthening cooperation between national authorities and the Commission, whilst leaving the latter without direct control or veto powers. Finally, the Industrial Accelerator Act introduces a new approach to foreign investment: not only the protection of national security, but also the guarantee that foreign capital generates added value in the European economy in terms of employment, innovation, supply chains and technology transfer. In a highly fragmentated scenario, this development will result in new notification obligations for companies operating within the European context.

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