

This is a courtesy translation of art. 15-16 and 17 of D-L n.23 08/04/2020.
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In-depth overview of the key changes to the legislation on the Government's special intervention power aimed at protecting strategically-relevant assets from foreign acquisition of art. 15-16-17 of the

Decree-Law n.23 of 8 April 2020

Urgent measures concerning access to credit and deferral of obligations for companies, as well as special powers in areas of strategic importance and as well as measures in the field of health and labour, extension of administrative and judicial deadlines.

(O.J. N. 94 of 08-4-2020)

In-depth overview

1. General notification obligation for the acquisition of shares

First and foremost, Decree-Law 23/2020 introduced a **much broader notification obligation than the one previously existing with respect to the acquisition of shares in companies owning goods and maintaining relations in the numerous sectors listed in EU Regulation 2019/452.**

It is worth noting that the Regulation merely identifies a long list of strategic sectors without further specification. In particular, art. 4 of the Regulation mentions energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, sensitive facilities, artificial intelligence, robotics, semiconductors, cybersecurity, quantum and nuclear technologies, nanotechnologies and biotechnologies. This generic list seems to suggest that the new scope of Golden Power significantly exceeds what was previously foreseen by national legislation, namely its application only to specific areas and operations within each sector identified by a series of implementing Decrees.

This interpretation was confirmed to us by the relevant department of the Prime Minister's Office: their interpretation is that notification obligations shall apply to all transactions affecting the corporate governance and shareholding structure of a company operating in the strategic sectors listed in EU Regulation 2019/452, pending the adoption of additional implementing Decrees at the national level that could clarify the scope of the new obligations. Their plan is to come up with one or more implementing Decrees within October this year.

The general notification obligation as expanded by Decree-Law 23/2020 applies to the acquisition by **non-EU entities** of shares in companies owning goods and maintaining relations in the sectors identified by the aforementioned EU Regulation 2019/452.

2. Special and transitional notification obligations of corporate resolutions, acts, and operations

Until 31 December 2020, resolutions, acts, and operations adopted and carried out by a company owning goods and maintaining relations in the strategic sectors listed in EU Regulation 2019/452 and resulting in changes in the ownership, control, and disposal of the undertaking's assets and their allocation are subject to notification obligations. Please note that these rules apply both to EU and non-EU subjects.

3. Special and transitional notification obligations for the acquisition of major holdings

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Until 31 December 2020, notification obligations for the acquisition of major holdings in companies owning goods and maintaining relations in the strategic sectors listed in EU Regulation 2019/452 was further extended as follows:

- If the acquisition of major holdings is carried out by a **EU entity** (which previously fell beyond the scope of Golden Power altogether), the notification obligation is triggered if the acquisition results in the **control of the company** by said entity.
- If the acquisition of major holdings is carried out by a **non-EU entity**, the notification obligation is triggered if the acquisition results in the holding of a share of voting rights or equity equal to **at least 10%**, taking into account the shares already owned either directly or indirectly, provided that the total value of the investment is at least €1 million. Furthermore, all successive acquisitions which exceed the thresholds of 15%, 20%, 25%, and 50% shall also be notified.

4. The Government's intervention power prior to notifications

In addition, while until now the investment screening process established by the rules on Golden Power was triggered by the notification of a transaction in a strategic sector, **Decree-Law 23/2020 empowers the Government to resort to its special intervention power on its own initiative even before the operation is notified** by the concerned company or in case of failure to comply with notification obligations by the deadlines set by existing legislation.

[...] Courtesy translation of the relevant articles

CHAPTER III URGENT MEASURES ON SPECIAL POWERS IN STRATEGICALLY-RELEVANT SECTORS

Art. 15

(Amendments to art. 4-bis, par. 3, of Decree-Law n. 105 of 21 September 2019, as converted and amended by Law n. 133 of November 2019)

1. Art. 4-bis, par. 3, of Decree-Law n. 105 of 21 September 2019, as converted and amended by Law n. 133 of November 2019, shall be replaced by the following articles:

"3. Until the entry into force of the first Prime Minister's Decree referred to in art. 2, par. 1-ter, of Decree-Law n. 21 of 15 March 2012, as converted and amended by Law n. 56 of 11 May 2012, as replaced by par. 1, letter c), number 3), of the present article, without prejudice to articles 1 and 2 of said Decree-Law, as amended by the present article, any acquisition of shares in a company owning goods and maintaining relations in the sectors referred to in art. 4, par. 1, letters a), b), c), d), and e), including the financial, credit, and insurance sectors, of Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 are subject to the notification referred to in art. 2, par. 5, of the aforementioned Decree-Law n. 21 of 2012.

3-bis. For the purpose of combating the COVID-19 pandemic and contain its negative effects, until 31 December 2020:

- a) all resolutions, acts, and operations adopted and carried out by a company owning goods and maintaining relations in the sectors referred to in art. 4, par. 1, letters a), b), c), d), and e) of Regulation (EU) 2019/452, including the financial, credit, and insurance sectors, as well as all other sectors identified by the Prime Minister's Decree referred to in the aforementioned art. 2, par.

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1-ter, resulting in changes in the ownership, control, and disposal of the undertaking's assets and their allocation, shall be subject to the notification obligation referred to in art. 2, par. 2, of Decree-Law n. 21 of 2012.

- b) Any acquisition of shares by foreign subjects, including those within the European Union, which is significant enough to result in the permanent presence of the acquirer as a consequence of the takeover of the company whose shares are the object of the acquisition, in accordance with art. 2359 of the Civil Code and with the Consolidated Law laid out in Legislative Decree n. 58 of 24 February 1998, as well as the acquisition of shares by non-EU subjects resulting in a share of voting rights or equity equal to at least 10%, taking into account the shares already owned either directly or indirectly, provided that the total value of the investment is at least €1 million, shall be subject to the notification obligation referred to in art. 2, par. 5, of the aforementioned Decree-Law n. 21 of 2012 with respect to the goods and relations referred to in art. 2, par. 1, of the aforementioned Decree-Law n. 21 of 2012, as well as the goods and relations in the sectors referred to in letter a) or identified by the Prime Minister's Decree referred to in the aforementioned art. 2, par. 1-ter, of Decree-Law n. 21 of 2012.
- c) Art. 2, par. 6, letter a) of Decree-Law n. 21 of 2012 shall also apply when the control referred to therein is exerted by the public administration of a EU Member State.

3-ter. Art. 2, par. 6 and 7, of the aforementioned Decree-Law n. 21 of 2012, as amended by the present article, shall apply.

3-quarter. Paragraphs 3 and 3-bis, which will remain in force until 31 December 2020, shall apply to resolutions, acts, and operations, as well as the acquisition of shares, which are relevant for the notification obligations referred to in art. 2, par. 2 and 5, of Decree-Law n. 21 of 2012, for which said obligation arose in the aforementioned period, even if the notification was subsequent or omitted. The acts and measures adopted following the exercise of special powers pursuant to par. 3 and 3-bis remain valid also after 31 December 2020, without prejudice to the effects of and legal relations arisen from these acts and measures after the aforementioned deadline. Without prejudice to notification obligations, the special powers referred to in art. 2 of the Decree-Law n. 21 of 2012 related to companies owning goods and maintaining relations in the sectors referred to in art. 4, par. 1, letters a), b), c), d), and e) of Regulation (EU) 2019/452, including the financial, credit, and insurance sectors, shall apply to the extent that the protection of the State's essential interests or the protection of security and public order, foreseen by the aforementioned art. 2, are not properly ensured by a specific regulation of the sector."

Art. 16

(Amendments to Decree-Law n. 21 of 15 March 2012, as converted and amended by Law n. 56 of 11 May 2012)

1. Decree-Law n. 21 of 15 March 2012, as converted and amended by Law n. 56 of 11 May 2012, shall be amended as follows:
 - a) At the end of art. 1, par. 8-bis, the following sentence shall be added: "In case of violation of the notification obligations referred to in the present article, the Prime Minister's Office may initiate the procedure to exercise the powers referred to in par.

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- 1, letters a), b), and c) also with no prior notification. To this end, the terms and procedural rules provided for by the present article, as well as by the Regulation referred to in par. 8, shall apply. The 45-day period referred to in par. 4 and 5 shall run from the conclusion of the procedure aimed at ascertaining the violation of the notification obligation.”;
- b) In the last sentence of art. 1-bis, par. 2, after the words “the integrity and security of the networks and the data transiting over them” the following words shall be added: “, including those identified based on the principles and guidelines developed at the international and EU level”;
- c) In art. 1-bis, par. 3-bis:
1. In the tenth sentence, the words “by the last sentence” shall be replaced by the following words: “by the eleventh sentence”;
 2. At the end, the following sentences shall be added: “In case of violation of the notification obligations referred to in the present article, the Prime Minister’s Office may initiate the procedure to exercise special powers. To this end, the terms and procedural rules provided for by the present article shall apply. The 30-day period referred to in the present paragraph shall run from the conclusion of the procedure aimed at ascertaining the violation of the notification obligation.”;
- d) The following paragraph shall be added after art. 2, par. 8: “8-bis. In case of violation of the notification obligations referred to in the present article, the Prime Minister’s Office may initiate the procedure to exercise special powers, also with no notification referred to in par. 2, 2-bis, and 5. To this end, the terms and procedural rules provided for by the present article, as well as by the Regulation referred to in par. 9, shall apply. The 45-day period referred to in par. 4 and 6 shall run from the conclusion of the procedure aimed at ascertaining the violation of the notification obligation.”;
- e) The following paragraphs shall be added to art. 2-bis:
- “2. For the purpose of gathering useful information to apply art. 1, 1-bis, and 2, the coordination group established in compliance with art. 3 of the Prime Minister’s Decree of 6 August 2014 may request the public administration, public or private entities, companies, and other third parties to provide any information and documents of which they are in possession.
 3. For the same purpose of the previous paragraph, the Prime Minister’s Office may conclude agreements and memorandums of understanding with research institutes.”

Art. 17

(Amendments to art. 120 of Legislative Decree n. 58 of 24 February 1998)

1. Art. 120 of Legislative Decree n. 58 of 24 February 1998 shall be amended as follows:
 - a) In par. 2-bis, the words “with a current high market value and” shall be deleted;
 - b) In par. 4-bis, the following sentence shall be added at the end: “Consob may introduce, for a limited time period and in addition to the thresholds set out in the first sentence of the present paragraph, a 5% threshold for companies with a particularly broad shareholder base by means of a decision motivated by the need to protect investors and ensure the efficiency and transparency of the market of corporate control and of the capital market.”