

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
INVESTMENT COMMITTEE****Investment policy related to national security****Notification by Italy****23 October 2018**

On 26 July 2018, Italy notified the OECD of a new investment policy related to national security pursuant to its obligations under the Codes of Liberalisation and the National Treatment instrument. This document reproduces the notification, which will support discussions of the measure at Freedom of Investment Roundtable 29 on 23 October 2018.

investment@oecd.org

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Investment policy related to national security Notification by Italy

Article 14 of the Decree-law 16 October 2017, n. 148 (converted in Law 4 December 2017, No. 172)

1. Introduction

1. In 2013, pursuant to the provisions of Article 11(a) “Notification and Information from Members” of the Codes of Liberalisation, and under Italy’s obligations under the Third Revised Decision on National Treatment, Italy notified to the OECD the Decree-Law of 12 March 2012, No. 21, converted into Law of 11 May 2012, No. 56 that establishes a mechanism for Government review of transactions regarding assets of companies operating in the sectors of defence or national security, as well as in strategic activities in the energy, transport and communications sectors ([DAF/INV/RD\(2013\)4/REV1](#)). Special powers are exercised by the Government in cases where an acquisition or other form or transaction triggers a threat of severe prejudice to essential interests of the State.

2. Changes to the rules that govern Italy’s national security review mechanism were brought into effect by [decree-law of 16 October 2017](#) and confirmed, without modification, by the [law of 4 December 2017](#). The changes, contained in article 14 of the decree-law, close the loopholes existing in the legislation about sanctions for non-respect of notification requirements and introduce sectors of “high-technology” in the list of areas indicative of a risk for security and public order.

3. Thus, the present notification concerns Article 14 of the Decree-law 16 October 2017, n.148, converted in Law 4 December 2017, No.172 that amends Decree-Law 15 March 2012, No.21.

2. Main characteristics of the revised rules

- It is envisaged a general administrative pecuniary sanction in case of violation by companies of the notification obligations that are functional to the exercise of special powers by the Government in the defence and national security sector (paragraph 1, letter a));
- the exercise of Government special powers applicable in the energy, transport and communications sectors, is extended to the technology-intensive sector (paragraph 1, letter b), nos. 1-5) including in particular: critical infrastructure, including storage and management of data and financial infrastructure; critical technology such as artificial intelligence, robotics, semiconductors, dual use technologies, network security and space or nuclear technology; security of supply of critical inputs; access and ability to control critical information. The exact scope of the technology-intensive sector will be determined through one or more regulations;

- it is clarified that the general provisions concerning administrative sanctions as per Law 24 November 1981, No. 689 (“Changes to the penal system”) also apply to the administrative sanctions related to the aforementioned special powers, except for the possibility of reduced payment (paragraph 1, letter c);
- the Government must assess the danger to safety and public order (paragraph 1, letter b), n. 6) in cases of acquisition operations by a non-EU entity on companies holding strategic assets in the energy, transport and communications sectors and when these acquisitions cause the establishment on a permanent basis of such non-EU entity in Italy. To determine whether a foreign investment can affect safety or public order, it is possible to take into account the fact that the foreign investor is controlled by the Government of a non-EU third country, also by means of significant funding (paragraph 1, letter b), n. 5). This assessment is in addition to the assessment of the threat of serious prejudice to public interests related to the security and functioning of networks and plants and to the continuity of supply, which was already provided for in the law.
- the new rules only apply to the procedures initiated after 16 October 2017, when the provisions in question (paragraph 2) entered into force.

3. Revised entry in the list of measures reported for transparency under the National Treatment instrument

A. Measures Reported for Transparency at the Level of National Government

I. Measures based on public order and essential security considerations

In 2012, Italy established a mechanism for government review of transactions regarding assets of companies operating in the sectors of defence or national security, as well as in strategic activities in the energy, transport and communications sectors. The mechanism was initially established Decree-Law of 15 March 2012, as subsequently modified by the Law of 11 May 2012, No 56, which entered into effect on 15 May 2012. The law also abolished the former Italian Golden Share Law. The [decree-law of 16 October 2017](#) as confirmed, without modification, by the [law of 4 December 2017](#), brought some modifications to the mechanism.

The laws accord special powers to the government in cases where an acquisition or other form or transaction triggers a threat of severe prejudice to essential interests of the State. Special powers can be exercised both towards national or foreign investors or investments, except in case of veto to majority takeovers by buyers from outside the EU in the energy, transport, telecommunications and high-technology sectors.

In the defence and national security sectors, the Government may act through the exercise of special powers as follows: the imposition of specific conditions on acquisitions of participations in companies engaged in strategic activities; the veto on decisions regarding those companies or ownership structure; the opposition to the acquisition of ownership in such companies by subjects other than the Italian State, Italian public entities or entities under their control, in cases where these acquisitions would lead to voting rights that may compromise interests of defence or national security.

In the sectors of energy, transport, communications and high-technology the government’s special powers consist in: the veto on or the authorisation of, under specific conditions, decisions, acts or operations concerning strategic assets; the imposition of specific

conditions to make affective acquisitions by non EU investors of companies owning strategic assets. In exceptional cases and when the above-mentioned acquisition determines control rights, the Government has the right of opposition to the entire acquisition by buyers from outside the EU (in compliance with article 49 of the Treaty of the Functioning of the European Union). The law further sets out which authorities carry out the risk assessment and the criteria to follow and define timeframes and obligations on companies to provide information to the government about the investment project.

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