

Italy

DECREE-LAW March 15, 2012, n. 21 (2012)

Unofficial translation

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Contents

DECREE-LAW March 15, 2012, n. 21

Rules on special powers over corporate structures in the defense and national security sectors, as well as for activities of strategic importance in the energy, transport, and communications sectors. (12G0040)

In force on: 10-7-2024

THE PRESIDENT OF THE REPUBLIC

Considering articles 77 and 87 of the Constitution;

Considering the extraordinary necessity and urgency of amending the legal framework regarding special powers attributed to the State in the context of privatized companies, which are the subject of infringement procedure no. 2009/2255 - currently at the stage of a referral decision under Article 258 of the Treaty on the Functioning of the European Union (TFEU) - as it violates the freedom of establishment and free movement of capital guaranteed by the TFEU;

Considering the deliberation of the Council of Ministers, adopted in the meeting of March 9, 2012;

On the proposal of the President of the Council of Ministers and the Minister for European Affairs, in agreement with the Ministers of the Interior, Defense, Economy and Finance, Foreign Affairs, Economic Development, and Infrastructure and Transport;

Issues the following decree-law:

Article 1 Special powers in the sectors of defense and national security

1. With one or more decrees of the President of the Council of Ministers, adopted on the proposal, within their respective areas of competence, of the Minister of Defense or the Minister of the Interior, in agreement with the Minister of Economy and Finance, the Minister of Foreign Affairs, the Minister of Economic Development and, respectively, with the Minister of the Interior or the Minister of Defense, after communication to the competent parliamentary committees, within ninety days from the date of entry into force of the law converting this decree, the activities of strategic importance for the defense and national security system, including key strategic activities, are identified, in relation to which, by decree of the President of the Council of Ministers, adopted following a resolution of the Council of Ministers, which is to be promptly transmitted in extract form to the competent parliamentary committees, the following special powers can be exercised in the event of a threat of serious harm to the essential interests of defense and national security: (6)

a) Imposition of specific conditions related to the security of supplies, information security, technological transfers, export controls in the case of acquisition, in any form, of shares in companies that carry out activities of strategic importance for the defense and national security system;

b) Veto on the adoption of resolutions, acts or operations of the assembly or administrative bodies of a company referred to in letter a), which have the effect of changing the ownership, control, or availability of the identified assets, including those relating to the merger or demerger of the company, the transfer of the business or branches thereof or controlled companies, the transfer abroad of the registered office, the modification of the corporate purpose, the dissolution of the company, the amendment of statutory clauses possibly adopted under article 2351, third paragraph, of the civil code or introduced under article 3, paragraph 1, of decree-law May 31, 1994, n. 332, converted, with modifications, by law July 30, 1994, n. 474, as last amended by article 3 of this decree, the transfer of real or use rights relating to tangible or intangible assets, the assignment thereof as security or the assumption of constraints that condition their use, also due to the subjection of the company to insolvency procedures; (6)

c) Opposition to the acquisition, in any form, of shares in a company referred to in letter a) by a subject other than the Italian State, Italian public bodies or entities controlled by them, if the purchaser comes to hold, directly or indirectly, also through subsequent acquisitions, by an intermediary or through otherwise connected subjects, a level of participation in the capital with voting rights capable of compromising the specific case the interests of defense and national security. For this purpose, the participation held by third parties with whom the purchaser has entered into one of the agreements referred to in article 122 of the consolidated law on financial intermediation, referred to in legislative decree February 24, 1998, n. 58, and subsequent modifications, or those referred to in article 2341-bis of the civil code, is also included.

1-bis. The decrees referred to in paragraph 1 aimed at identifying activities of strategic importance for the defense and national security system establish the type of acts or operations within the same group to which the provisions of this article do not apply.

2. In order to assess the threat of serious harm to the essential interests of defense and national security deriving from the resolutions, acts or operations referred to in letter b) of paragraph 1, the Government considers, taking into account the object of the resolution, act or operation, the strategic importance of the assets or companies being transferred, the suitability of the structure resulting from the resolution, act or operation to guarantee the integrity of the defense and national security system, the security of information relating to military defense, the international interests of the State, the protection of national territory, critical and strategic infrastructure and borders, as well as the elements referred to in paragraph 3. (6)

3. In order to assess the threat of serious harm to the essential interests of defense and national security, deriving from the acquisition of shares referred to in letters a) and c) of paragraph 1, the Government, in compliance with the principles of proportionality and reasonableness, considers, in light of the potential influence of the purchaser on the company, also due to the extent of the acquired participation:

a) The adequacy, also considering the methods of financing the acquisition, of the economic, financial, technical, and organizational capacity of the purchaser as well as the industrial project, with respect to the regular continuation of activities, the maintenance of technological assets, also concerning key strategic activities, the security and continuity of supplies, as well as the correct and punctual execution of contractual obligations assumed towards public administrations, directly or indirectly, by the company whose shares are being acquired, with specific regard to relations relating to national defense, public order, and national security;

b) The existence, also considering the official positions of the European Union, of objective reasons that make it possible to believe that there are links between the purchaser and third countries that do not recognize the principles of democracy or the rule of law, that do not respect international law or that have assumed risky behavior towards the international community, inferred from the nature of their alliances, or have relationships with criminal or terrorist organizations or subjects connected to them in any way.

3-bis. If the acquisition of the shares referred to in paragraph 1, letters a) and c), is carried out by a subject outside the European Union, referred to in article 2, paragraph 5-bis, the Government can also consider the following circumstances:

a) That the purchaser is directly or indirectly controlled by the public administration, including state bodies or armed forces, of a country not belonging to the European Union, also through the ownership structure or significant funding;

b) That the purchaser has already been involved in activities that impact security or public order in a Member State of the European Union;

c) That there is a serious risk that the purchaser engages in illegal or criminal activities. (6)

4. For the exercise of the veto power referred to in paragraph 1, letter b), ((unless the operation is)) under evaluation or has already been evaluated pursuant to paragraph 5, the company notifies the Presidency of the Council of Ministers a complete information on the resolution, act or operation to be adopted in order to allow the timely exercise of the veto power. The notification does not entail for the Presidency of the Council of Ministers nor for the company the obligation to notify the public under article 114 of the consolidated law referred to in legislative decree February 24, 1998, n. 58, and subsequent modifications. Within forty-five days of the notification, the President of the Council of Ministers communicates any veto. If it is necessary to request information from the company, this period is suspended, once, until the requested information is received, which is provided within ten days. If it is necessary to formulate investigative requests to third parties, the aforementioned period of forty-five days is suspended, once, until the requested information is received, which is provided within twenty days. Subsequent information requests and investigative requests to third parties do not suspend the terms. In case of incomplete notification, the forty-five day period provided by this paragraph runs from the receipt of the information or elements that complete it.

After the aforementioned terms, the operation can be carried out. The power referred to in this paragraph is exercised in the form of imposing specific prescriptions or conditions whenever this is sufficient to ensure the protection of the essential interests of defense and national security. Resolutions or acts adopted in violation of this paragraph are null and void. The Government may also enjoin the company and the possible counterparty to restore the previous situation at their own expense.

Unless the act constitutes a crime, anyone who does not comply with the obligations referred to in this paragraph, including those resulting from the exercise of the power referred to in paragraph 1, letter b), possibly exercised in the form of imposing specific prescriptions or conditions, is subject to an administrative pecuniary sanction up to twice the value of the operation and in any case not less than one percent of the cumulative turnover realized by the companies involved in the last fiscal year for which the financial statements have been approved. (6)

5. For the possible exercise of the powers referred to in paragraph 1, letters a) and c), anyone who acquires a participation in companies that carry out activities of strategic importance for the defense and national security system, if possible jointly with the company whose shares are being acquired, notifies the same acquisition within ten days to the Presidency of the Council of Ministers, transmitting at the same time the necessary information, including a general description of the acquisition project, the purchaser and its operational scope, for the evaluations referred to in paragraph 3. In cases where the notification is not made jointly by all the parties to the procedure indicated in the first period, the notifying company transmits, simultaneously with the notification, an information, containing the essential elements of the operation and the same notification, to the company whose shares are being acquired, to allow its participation in the procedure, providing proof of the relative receipt. In the case where the acquisition concerns shares of a company admitted to trading on regulated markets, the notification must be made if the purchaser comes to hold, following the acquisition, a participation exceeding the threshold of 3 percent, and subsequent notifications must be made for acquisitions that result in exceeding the thresholds of 5 percent, 10 percent, 15 percent, 20 percent, 25 percent and 50 percent. In the case where the acquisition concerns shares or quotas of a company not admitted to trading on regulated markets, the notification must be made if the purchaser comes to hold, following the acquisition, a participation exceeding the thresholds ((indicated in the third period)).

The power to impose specific conditions referred to in paragraph 1, letter a), or to oppose the acquisition pursuant to paragraph 1, letter c), is exercised within forty-five days from the date of notification.

Within fifteen days from the notification, the acquired company may submit briefs and documents to the Presidency of the Council of Ministers. If it is necessary to request information ((from the parties to the procedure, the aforementioned period of forty-five days)) is suspended, once, until the requested information is received, which is provided within ten days. If it is necessary to formulate investigative requests to third parties, the aforementioned period of forty-five days is suspended, once, until the requested information is received, which is provided within twenty days. Subsequent information requests and investigative requests to third parties do not suspend the terms, after which the acquisition can be carried out. In case of incomplete notification, the forty-five day period provided by this paragraph runs from the receipt of the information or elements that complete it. Until the notification and, subsequently, until the term for the imposition of conditions or the exercise of the power of opposition expires, the voting rights and those with non-pecuniary content, related to the shares or quotas that represent the relevant participation, are suspended.

If the power is exercised in the form of imposing conditions referred to in paragraph 1, letter a), in the event of non-compliance or violation of the imposed conditions, for the entire period during which the non-compliance or violation persists, the voting rights, or in any case the rights with non-pecuniary content, related to the shares or quotas that represent the relevant participation, are suspended. Resolutions possibly adopted with the determining vote of such shares or quotas, as well as the resolutions or acts adopted in violation or non-compliance with the imposed conditions, are null and void. The acquiring company and the company whose shares are being acquired that do not comply with the imposed conditions are also subject, unless the fact constitutes a crime, to an administrative pecuniary sanction equal to twice the value of the operation and in any case not less than 1 percent of the turnover realized in the last fiscal year for which the financial statements have been approved. In case of exercise of the power of opposition, the transferee cannot exercise the voting rights and those with non-pecuniary content, related to the shares or quotas that represent the relevant participation, and must sell the same shares or quotas within a year. In case of non-compliance, the court, at the request of the Presidency of the Council of Ministers, orders the sale of the aforementioned shares or quotas according to the procedures referred to in article 2359-ter of the civil code. The assembly resolutions possibly adopted with the determining vote of such shares or quotas are null and void. (6) ((12))

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5-bis. For the purposes of exercising the special powers referred to in this article, the establishment of companies whose corporate purpose includes the performance of activities of strategic importance or that hold assets of strategic importance for the defense and national security system is notified to the Presidency of the Council of Ministers within the terms and with the procedures referred to in this article.

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6. If the activities of strategic importance for the defense and national security system, identified with the decrees of the President of the Council of Ministers referred to in paragraph 1, refer to companies directly or indirectly participated by the Ministry of Economy and Finance, the Council of Ministers resolves, for the purposes of exercising the special powers referred to in the same paragraph, on the proposal of the Minister of Economy and Finance. The notifications referred to in paragraphs 4 and 5 are immediately transmitted by the Presidency of the Council of Ministers to the Ministry of Economy and Finance.

7. The decrees identifying the activities of strategic importance for the defense and national security system referred to in paragraph 1 are updated at least every three years.

8. By regulation, adopted pursuant to article 17, paragraph 1, of law August 23, 1988, n. 400, and subsequent modifications, after hearing the opinion of the competent parliamentary committees, on the proposal of the Minister of Economy and Finance, in agreement with the Minister of Foreign Affairs, the Minister of the Interior, the Minister of Defense, and the Minister of Economic Development, implementing provisions of this article are issued, also with reference to the definition, within the available human, instrumental, and financial resources under current legislation and without new or additional burdens on the State budget, of the organizational modalities for carrying out the preparatory activities for the exercise of the special powers provided by this article. The opinion referred to in the first period is expressed within twenty days from the date of transmission of the regulation draft to the Chambers. After this term, the regulation can still be adopted. Until the adoption of the same regulation, the competencies related to the proposals for the exercise of special powers, referred to in paragraph 1, and the consequent activities, referred to in paragraphs 4 and 5, are attributed to the Ministry of Economy and Finance for the companies it participates in, or, for other companies, to the Ministry of Defense or the Ministry of the Interior, according to their respective areas of competence.

8-bis. Unless the act constitutes a crime and without prejudice to the nullities provided by law, anyone who does not comply with the notification obligations referred to in this article is subject to an administrative pecuniary sanction up to twice the value of the operation and in any case not less than one percent of the cumulative turnover realized by the companies involved in the last fiscal year for which the financial statements have been approved. In cases of violation of the notification obligations referred to in this article, even in the absence of the notifications referred to in paragraphs 4 and 5, the Presidency of the Council of Ministers may initiate the procedure for the possible exercise of the powers referred to in paragraph 1, letters a), b) and c). To this end, the terms and procedural rules provided by this article and by the regulation referred to in paragraph 8 apply. The term of forty-five days referred to in paragraphs 4 and 5 runs from the conclusion of the procedure for verifying the violation of the notification obligation. (2)

UPDATE (2) The D.L. October 16, 2017, n. 148, converted with modifications by L. December 4, 2017, n. 172, has provided (with art. 14, paragraph 2) that this amendment applies only to procedures initiated after 10/16/2017.

UPDATE (6) The D.L. September 21, 2019, n. 105, converted with modifications by L. November 18, 2019, n. 133, has provided (with art. 4-bis, paragraph 2) that "The provisions introduced by paragraph 1 of this article, excluding those of paragraph 1, letter d), subparagraph Art. 2-ter, apply also to proceedings in progress at the date of entry into force of the conversion law of this decree; the terms not yet expired on the same date, without prejudice to the start date of their course, are extended until the duration established by this article, if greater than that previously provided."

Article 1-bis (Special powers concerning broadband electronic communication services with 5G technology, cloud technology-based, and other assets)

1. For the purposes of exercising the special powers referred to in this article, broadband electronic communication services based on 5G technology constitute activities of strategic importance for the national defense and security system. For the same purposes referred to in this article, additional services, goods, relationships, activities, and technologies relevant to cybersecurity, including those related to cloud technology, may be identified with one or more decrees of the President of the Council of Ministers, in agreement with the Minister of Economic Development, the Minister of the Interior, the Minister of Defense, the Minister of Foreign Affairs and International Cooperation, the Minister for Technological Innovation and Digital Transition, and with the other competent Ministers for sector, after consulting the National Cybersecurity Agency, also in derogation of article 17 of the law August 23, 1988, n. 400, after hearing the competent parliamentary committees, which give their opinion within thirty days from the date of transmission of the draft decrees, after which the decrees are adopted even in the absence of an opinion.

2. Without prejudice to the obligations provided pursuant to decree-law September 21, 2019, n. 105, converted, with modifications, by law November 18, 2019, n. 133, companies that, even through contracts or agreements, intend to acquire, under any title, goods or services related to the design, implementation, maintenance, and management of the activities referred to in paragraph 1, or high-tech components functional to the aforementioned implementation or management, notify, before proceeding with the aforementioned acquisition, the Presidency of the Council of Ministers an annual plan which includes: the sector affected by the notification; detailed identification data of the notifying entity; the procurement program; detailed identification data of the related, even potential, suppliers; description of the goods, services, and high-tech components functional to the design, implementation, maintenance, and management of the activities referred to in paragraph 1; complete information on ongoing contracts and development prospects of the 5G network, or other systems and assets referred to in paragraph 1; any further information functional to providing a detailed picture of the methods of development of the notifier's digitization systems, as well as the exact fulfillment of the conditions and prescriptions imposed following previous notifications; complete information regarding any communications made pursuant to article 1, paragraph 6, letter a), of decree-law no. 105 of 2019, converted, with modifications, by law no. 133 of 2019, for the purpose of security checks by the National Evaluation and Certification Center (CVCN), including the evaluation outcome, if available, and related prescriptions, if imposed. With one of the decrees referred to in paragraph 1, further contents of the annual plan, any additional criteria and methods for notifying the same plan, as well as any types of activities excluded from the notification obligation, also considering the reduced size of the operation, may also be identified. The plan referred to in this paragraph also includes complete information on contracts or agreements related to broadband electronic communication services based on 5G technology already authorized, for which the effectiveness of the authorizing measures already adopted remains unaffected.

3. The notification referred to in paragraph 2 is transmitted annually, before proceeding with the implementation of the plan, without prejudice to the possibility of updating, after notification pursuant to the same paragraph 2 to the Presidency of the Council of Ministers, the plan in progress during the year, on a four-month basis. Within thirty days from the notification, by decree of the President of the Council of Ministers, adopted on a compliant resolution of the Council of Ministers, the annual plan referred to in paragraph 2 is approved, subject to any imposition of prescriptions or conditions, or its approval is denied with the exercise of the veto power. Unless otherwise provided in the plan approval decree, the effectiveness of the decrees of the President of the Council of Ministers already adopted on the date of entry into force of this article remains unaffected. If it is necessary to conduct further investigations regarding technical aspects, including the assessment of possible vulnerability factors, which could compromise the integrity and security of networks, the data that transit through them, or the systems, the thirty-day period referred to in the second period can be extended up to twenty days, extendable once only, by a further twenty days, in cases of particular complexity. If it is necessary to request information from the notifier during the investigation, this term is suspended, once only, until the requested information is received, which is provided within ten days. If it is necessary to make investigation requests to third parties, the aforementioned thirty-day period is suspended, once only, until the requested information is received, which is provided within twenty days. Subsequent information requests and investigation requests to third parties after the first do not suspend the terms. In case of incomplete notification, the thirty-day period referred to in the second period runs from the receipt of the information or elements that complete it. After the aforementioned terms, the plan is considered approved.

4. Special powers are exercised in the form of imposing specific prescriptions or conditions whenever this is sufficient to ensure the protection of the essential interests of national defense and security. To this end, the elements indicating the presence of vulnerability factors that could compromise the integrity and security of networks and the data that transit through them, including those identified based on principles and guidelines developed at the international and European Union level, are also evaluated. If the prescriptions or conditions are not sufficient to ensure the protection of the aforementioned interests, the Government, taking into account the contents of the notified plan, the obsolescence, cost, and replacement times of the equipment and the need not to slow down the development of 5G technology or other technologies in the country, in compliance with the principles of proportionality and adequacy, approves, in whole or in part, the plan for a limited period, indicating a term for the possible replacement of certain goods or services, or does not approve the plan exercising the veto power.

5. Unless otherwise provided in this paragraph, if the notifying entity begins the execution of contracts or agreements, after the date of entry into force of this provision, included in the notification, before the term for the approval of the plan has expired, the Government may enjoin the company, setting the relative term, to restore at its own expense the situation prior to the execution of the said contract or agreement. Unless the act constitutes a crime, anyone who does not comply with the notification obligations referred to in this article or the provisions contained in the special powers exercise measure is subject to an administrative pecuniary sanction up to three percent of the turnover of the subject required to notify. Contracts possibly concluded in violation of the prescriptions or conditions contained in the special powers exercise measure are null. The Government may also enjoin the company, setting the relative term, to restore at its own expense the situation prior to the violation, applying an administrative pecuniary sanction up to one-twelfth of that provided for in the second period for each month of delay in compliance, proportional to the delay. A similar sanction may be applied for the delay in compliance with the injunction referred to in the first period. In cases of violation of the notification obligations referred to in this article, even in the absence of the notification, the Presidency of the Council of Ministers may initiate ex officio the procedure for the possible exercise of special powers. For this purpose, the terms and procedural rules provided by this article apply. The thirty-day term referred to in paragraph 3 runs from the conclusion of the procedure for verifying the violation of the notification obligation.

6. For the exercise of special powers referred to in this article, the coordination group for the exercise of special powers is composed of representatives of the Presidency of the Council of Ministers, the Ministry of Economic Development, the Ministry of Economy and Finance, the Ministry of the Interior, the Ministry of Defense, the Ministry of Foreign Affairs and International Cooperation, the Minister for Technological Innovation and Digital Transition, if provided, as well as representatives of the National Cybersecurity Agency. The coordination group also uses the National Evaluation and Certification Center (CVCN) and the technical branches of the Ministries of the Interior and Defense, for the technical evaluations of the documentation related to the annual plan referred to in paragraph 2, and its possible updates, preparatory to the exercise of special powers and related to high-tech goods and components functional to the design, implementation, maintenance, and management of the activities referred to in paragraph 1, as well as other possible vulnerability factors that could compromise the integrity and security of networks, the data that transit through them, or the systems.

7. Monitoring activities, aimed at verifying compliance with the prescriptions and conditions imposed with the special powers exercise measure, analyzing the relative adequacy, and verifying the adoption of adequate measures, including technological ones, implementing the same prescriptions or conditions, are carried out by a committee composed of one or more representatives of the Presidency of the Council of Ministers, the Ministry of Economic Development, the Ministry of Defense, the Ministry of the Interior, the Minister for Technological Innovation and Digital Transition, or, if not appointed, the structure of the Presidency of the Council of Ministers competent for technological innovation and digitization, as well as the National Cybersecurity Agency. For monitoring activities, the committee also uses the National Evaluation and Certification Center (CVCN), and the technical branches of the Ministries of the Interior and Defense. Other representatives of the Ministries referred to in paragraph 6 may be called to participate in the monitoring committee's work. For the concrete exercise of monitoring activities, the interested party communicates, with the periodicity indicated by the special powers exercise measure, each executive activity carried out, including the stipulation of contracts related to it, providing all appropriate technical details and highlighting the reasons suitable to ensure compliance with the approved plan pursuant to paragraph 3. The interested party also transmits a semi-annual periodic report on ongoing activities. The monitoring committee may arrange inspections and technical checks, including the methods referred to in article 2-bis, concerning high-tech goods and components functional to the design, implementation, maintenance, and management of the activities referred to in paragraph 1, as well as other possible vulnerability factors that could compromise the integrity and security of networks, the data that transit through them, or the systems, subject to the special powers exercise measure. Non-compliance with the prescriptions or conditions contained in the approval measure or any other circumstance capable of affecting the approval measure is reported to the coordination group for the exercise of special powers referred to in paragraph 6, which may propose to the Council of Ministers the application of the sanctions provided for in paragraph 5, the revocation or modification of the approval measure, and the prohibition of the exercise of activities functional to the design, implementation, maintenance, and management of the activities referred to in paragraph 1.

8. For the activities provided by this article, no compensation, attendance fees, reimbursements, or other emoluments are due to the members of the coordination group referred to in paragraph 6 and those of the monitoring committee referred to in paragraph 7.

9. With a decree of the President of the Council of Ministers, after consulting the coordination group constituted pursuant to paragraph 6, also in derogation of article 17 of law August 23, 1988, n. 400, simplification measures of the notification methods, terms, and procedures relating to the investigation for the possible exercise of the powers referred to in this article may be identified.

UPDATE (6) The D.L. September 21, 2019, n. 105, converted with modifications by L. November 18, 2019, n. 133, has provided (with art. 4-bis, paragraph 2) that "The provisions introduced by paragraph 1 of this article, excluding those of paragraph 1, letter d), subparagraph Art. 2-ter, apply also to proceedings in progress at the date of entry into force of the conversion law of this decree; the terms not yet expired on the same date, without prejudice to the start date of their course, are extended until the duration established by this article, if greater than that previously provided."

UPDATE (10) The D.L. June 14, 2021, n. 82, converted with modifications by L. August 4, 2021, n. 109, has provided (with art. 16, paragraph 10) that this amendment takes effect from the date when the communication obligation regulated by paragraph 9, letter a) of art. 16 of the aforementioned decree-law becomes effective.

UPDATE (12) The D.L. March 21, 2022, n. 21, converted with modifications by L. May 20, 2022, n. 51, has provided (with art. 28, paragraph 2) that "In the first application, the plan referred to in paragraph 2 of article 1-bis of the cited decree-law no. 21 of 2012, converted, with modifications, by law no. 56 of 2012, as amended by paragraph 1 of this article, also includes complete information on contracts or agreements related to broadband electronic communication services based on 5G technology already authorized. Without prejudice to the effectiveness of the decrees of the President of the Council of Ministers already adopted pursuant to article 1-bis of decree-law no. 21 of 2012, converted, with modifications, by law no. 56 of 2012, the proceedings in progress at the date of entry into force of this decree are declared terminated by the coordination group referred to in the aforementioned article 1-bis, and the related examination is carried out during the evaluation of the annual plan, without prejudice to the provisions of article 1-bis, paragraphs 3 and 5, of decree-law no. 21 of 2012, converted, with modifications, by law no. 56 of 2012."

Article 2. Special powers related to strategic assets in the sectors of energy, transport, and communications

1. Through one or more decrees by the President of the Council of Ministers, on the proposal of the Minister of Economy and Finance, the Minister of Economic Development, and the Minister of Infrastructure and Transport, in agreement with the Minister of the Interior, the Minister of Foreign Affairs and International Cooperation, and the relevant ministers for each sector, and in derogation of Article 17 of Law no. 400 of August 23, 1988, after consultation with the competent parliamentary committees (which must give their opinion within thirty days, after which the decrees can still be adopted), the networks and facilities, including those necessary to ensure the minimum supply and operation of essential public services, the assets, and relationships of strategic relevance to the national interest are identified. This includes assets under concessions, no matter how granted, including large-scale hydroelectric concessions and the exploitation of geothermal resources, in the sectors of energy, transport, and communications, as well as the types of acts or operations within the same group to which the provisions of this article do not apply. The decrees referred to in the first sentence are adopted within 120 days from the entry into force of this provision and are updated at least every three years.

1-bis. (REPEALED by Law Decree no. 105 of September 21, 2019, converted into Law no. 133 of November 18, 2019)

1-ter. Through one or more decrees by the President of the Council of Ministers, on the proposal of the Minister of Economy and Finance, the Minister of Economic Development, and the Minister of Infrastructure and Transport, in agreement with the Minister of the Interior, the Minister of Defense, the Minister of Foreign Affairs and International Cooperation, and the relevant ministers for each sector, adopted in derogation of Article 17 of Law no. 400 of August 23, 1988, after consultation with the competent parliamentary committees (which must give their opinion within thirty days, after which the decrees can still be adopted), the assets and relationships of strategic relevance to national interest, including those subject to concessions, no matter how granted, additional to those identified in Article 1, paragraph 1, and paragraph 1 of this article, are identified in order to verify the existence of a threat to security and public order, including possible risks to the security and functioning of networks and facilities and the continuity of supplies. These are in the sectors referred to in Article 4, paragraph 1, of Regulation (EU) 2019/452 of the European Parliament and Council of March 19, 2019, as well as the types of acts or operations within the same group to which the provisions of this article do not apply. Whenever the acts, operations, and resolutions concern assets covered by intellectual property rights related to artificial intelligence, semiconductor production machinery, cybersecurity, aerospace, energy storage, quantum, and nuclear technologies, and food production technologies, and involve one or more subjects outside the European Union, the provisions of this article also apply within the same group, while verifying the conditions for the exercise of special powers. The decrees referred to in the first sentence are adopted within 120 days from the entry into force of this provision and are updated at least every three years. (6)

2. Any resolution, act, or operation adopted by a company that holds one or more of the assets identified under paragraph 1, which results in changes to the ownership, control, or availability of these assets, or changes in their purpose, including resolutions of the shareholders' meeting or the board of directors concerning the merger or division of the company, the transfer of the registered office abroad, the modification of the corporate purpose, the dissolution of the company, the amendment of statutory clauses adopted under Article 2351, third paragraph of the Civil Code, or introduced under Article 3, paragraph 1, of Law Decree no. 332 of May 31, 1994, converted, with modifications, by Law no. 474 of July 30, 1994, as last amended by Article 3 of this decree, the transfer of the company or its branches that include said assets or the assignment of the same as a guarantee, must be notified, unless the operation is already under review or has already been assessed under paragraph 5, within ten days and, in any case, before implementation, to the Presidency of the Council of Ministers by the company itself. The same notification requirements apply within the same timeframe to resolutions of the shareholders' meeting or the board of directors concerning the transfer of controlled companies that hold said assets. (2) (6)

2-bis. Any resolution, act or transaction adopted by an undertaking that holds one or more of the assets identified pursuant to paragraph 1-ter, which has the effect of changing the ownership, control or availability of those assets in favour of an entity outside the European Union, referred to in paragraph 5-bis, or, in the sectors identified in the second sentence of paragraph 5, also in favour of a person belonging to the European Union, including those established or resident in Italy, including resolutions of the shareholders' meeting or of the administrative bodies concerning the merger or demerger of the company, the transfer of the company or branches of it in which such assets are included or the assignment of the same as a guarantee, the transfer of subsidiaries holding the aforementioned assets, or which has the effect of transferring the registered office to a country outside the European Union, shall be notified, unless the transaction is being evaluated or has already been valued pursuant to paragraph 5, within ten days and in any case before it is implemented, to the Presidency of the Council of Ministers by the same company. Any resolution, act or transaction adopted by an undertaking holding one or more of the assets identified pursuant to paragraph 1-ter, which has the effect of changing their intended purpose, as well as any resolution concerning the modification of the corporate purpose, the dissolution of the company or the amendment of any clauses of the articles of association adopted pursuant to Article 2351, shall also be notified in the same terms. Third paragraph of the Civil Code</B114> or introduced pursuant to , converted, with amendments, by , as last amended by Article 3 of this Decree. (6) (10)

3. By decree of the President of the Council of Ministers, adopted following a resolution by the Council of Ministers and promptly communicated in an excerpt to the competent parliamentary committees, a veto may be issued against the resolutions, acts, and operations referred to in paragraphs 2 and 2-bis if they result in an exceptional situation, not regulated by national or European sectoral legislation, that poses a serious threat to public interests relating to the security and functioning of networks and facilities and the continuity of supplies. (6)

4. With the notifications referred to in paragraphs 2 and 2-bis, the Government is provided with complete information on the resolution, act, or operation to allow for the timely exercise of the veto power if necessary. The notification does not obligate the Presidency of the Council of Ministers or the company to communicate it to the public under Article 114 of the consolidated text pursuant to Legislative Decree February 24, 1998, no. 58, and subsequent amendments. Within forty-five days from the notification, the President of the Council of Ministers communicates any veto. If it becomes necessary to request information from the company, this period is suspended once until the requested information is received, which must be provided within ten days. If it becomes necessary to make investigative requests to third parties, the aforementioned forty-five-day period is suspended once until the requested information is received, which must be provided within twenty days. Requests for information and investigative requests to third parties subsequent to the first do not suspend the deadlines. In case of an incomplete notification, the forty-five-day period under this paragraph starts from the receipt of the information or elements that complete the notification. Until the notification is completed and, in any case, until the expiration of the deadlines under this paragraph, the effectiveness of the resolution, act, or relevant operation is suspended. After the expiration of the deadlines under this paragraph, the operation may proceed. The veto power under paragraph 3 is exercised by imposing specific prescriptions or conditions whenever necessary to safeguard the public interests referred to in paragraph 3. Resolutions, acts, or operations adopted or carried out in violation of this paragraph are null and void. The Government may also order the company and the other party, if applicable, to restore the previous situation at their own expense. Unless the action constitutes a crime, anyone who fails to comply with the provisions of paragraphs 2 and 2-bis and this paragraph is subject to an administrative monetary penalty of up to double the value of the operation and no less than one percent of the cumulative turnover realized by the companies involved in the most recent fiscal year for which financial statements have been approved. (6)

5. The acquisition in any form by a subject outside the European Union of shares in companies holding assets identified as strategic under paragraph 1, as well as those mentioned in paragraph 1-ter, with significance that results in the acquirer's stable establishment through the assumption of control of the company whose shares are being acquired, as per Article 2359 of the Civil Code and the Consolidated Law pursuant to Legislative Decree no. 58 of February 24, 1998, must be notified, where possible jointly with the company whose shares are the object of the acquisition, within ten days to the Presidency of the Council of Ministers, together with all relevant information useful for the general description of the acquisition project, the acquirer, and its scope of operation. In the sectors of communications, energy, transport, health, agri-food, and finance, including credit and insurance, the obligation to notify, as provided in the first sentence, also applies to acquisitions in any form of shares by subjects belonging to the European Union, including those residing in Italy, with significance that results in the acquirer's stable establishment through the assumption of control of the company whose shares are being acquired, in accordance with Article 2359 of the Civil Code and the Consolidated Law pursuant to Legislative Decree no. 58 of February 24, 1998.

When calculating the relevant participation, the shares held by third parties with whom the acquirer has entered into one of the agreements provided under Article 122 of the Consolidated Law pursuant to Legislative Decree no. 58 of February 24, 1998, and subsequent amendments, or under Article 2341-bis of the Civil Code, are taken into account.

Deleted by Law Decree No. 105 of September 21, 2019, converted with modifications by Law No. 133 of November 18, 2019. Except in cases where the act constitutes a crime and without prejudice to the invalidities provided by law, anyone who fails to comply with the notification obligations under this paragraph is subject to an administrative monetary fine of up to twice the value of the transaction and, in any case, not less than 1% of the cumulative turnover generated by the companies involved in the last financial year for which the financial statements were approved. In cases where the notification is not made jointly by all parties to the transaction indicated in the first and second periods, the notifying company shall transmit, together with the notification, information containing the essential elements of the transaction and the notification itself to the company whose shares are the object of the acquisition, to allow its participation in the procedure, providing proof of receipt.

The notification obligation under this article also applies to acquisitions of shares by non-EU foreign entities in companies holding the assets identified as strategic under paragraphs 1 and 1-ter, which assign at least 10% of voting rights or capital, considering shares or quotas already directly or indirectly held, when the total investment value equals or exceeds one million euros. Acquisitions that result in exceeding the thresholds of 15%, 20%, 25%, and 50% of the capital are also subject to notification.

5-bis For the purposes of Article 1 and this Article, a non-EU entity is understood to mean:

- a) Any natural person who does not hold the citizenship of a member state of the European Union;
- b) Any natural person who holds the citizenship of a member state of the European Union but does not have residence, habitual domicile, or the primary place of activity in a member state of the European Union or the European Economic Area, or who is otherwise not established there;
- c) Any legal person that does not have its legal seat or administration, or the principal place of activity in a member state of the European Union or the European Economic Area, or that is otherwise not established there;
- d) Any legal person that has established its legal seat or administration or its principal place of activity in a member state of the European Union or the European Economic Area, or that is otherwise established there, but is directly or indirectly controlled by a natural or legal person referred to in points a), b), or c);
- e) Any natural or legal person who has the citizenship of a member state of the European Union or the European Economic Area, who has established residence, habitual domicile, the legal seat or administration, or the principal place of activity in a member state of the European Union, or who is otherwise established there, if there are elements indicating a behavior aimed at circumventing the application of the rules under this decree.

6. If the acquisition referred to in paragraph 5 poses a serious threat to the essential interests of the State, as outlined in paragraph 3, or a danger to security or public order, within forty-five days from the notification under the same paragraph 5, through a decree of the President of the Council of Ministers, adopted based on a decision by the Council of Ministers, to be promptly transmitted in an extract to the competent parliamentary committees, the validity of the acquisition may be subject to the assumption, by the acquirer and the company whose shares are being acquired, of commitments aimed at ensuring the protection of the aforementioned interests. Within fifteen days of the notification, the acquired company may submit documents and statements to the Presidency of the Council of Ministers. If it becomes necessary to request information from the acquirer and the company whose shares are being acquired, the period mentioned in the first sentence is suspended, once only, until the requested information is received, which must be provided within ten days. If it becomes necessary to request further inquiries from third parties, the aforementioned forty-five day period is suspended, once only, until the requested information is received, which must be provided within twenty days. Subsequent requests for information and inquiries from third parties after the first do not suspend the deadlines, after which the special powers are considered not exercised. In the case of incomplete notification, the forty-five day period provided for in this paragraph begins from the receipt of the information or elements that complete it.

In exceptional cases of risk to the protection of the aforementioned interests, which cannot be mitigated through the commitments mentioned in the first sentence, the Government may oppose the acquisition through the same procedure. Until the notification and, subsequently, until the expiration of the period for the possible exercise of the veto power or the imposition of commitments, the voting rights or other non-property rights connected to the shares or quotas representing the relevant participation are suspended. After the expiration of the aforementioned periods, the operation may be carried out. If the power is exercised in the form of imposing commitments, in case of non-compliance, for the entire duration of the non-compliance, the voting rights or other non-property rights connected to the shares or quotas representing the relevant participation are suspended. Resolutions adopted with the decisive vote of such shares or quotas, or any resolutions or acts adopted in violation or non-compliance with the imposed conditions, are null and void. The acquiring company and the company whose shares are the object of the acquisition that do not comply with the imposed commitments are also subject, unless the act constitutes a crime, to an administrative monetary fine equal to twice the value of the operation, and in any case, not less than 1% of the turnover generated in the last financial year for which the financial statements were approved.

In case of exercise of the veto power, the acquirer may not exercise the voting rights or other non-property rights connected to the shares or quotas representing the relevant participation, and must sell those shares or quotas within one year. In case of non-compliance, the court, at the request of the Government, orders the sale of the shares or quotas according to the procedures provided for in Article 2359-ter of the Civil Code. Any resolutions of the shareholders' meeting adopted with the decisive vote of such shares or quotas are null and void. To determine whether a foreign investment may affect security or public order, the following circumstances may be taken into consideration:

a) that the acquirer is directly or indirectly controlled by the public administration, including state bodies or armed forces, of a non-EU country, including through ownership structure or significant financing;

b) that the acquirer has been involved in activities affecting security or public order in a member state of the European Union;

c) that there is a serious risk that the acquirer will engage in illegal or criminal activities.

7. The special powers referred to in the preceding paragraphs are exercised solely based on objective and non-discriminatory criteria. For this purpose, the Government considers the following criteria, with respect to the nature of the operation:

a) The existence of objective reasons, also taking into account the official positions of the European Union, that suggest possible links between the acquirer and third countries that do not recognize the principles of democracy or the rule of law, that do not respect international law, or that have adopted risky behaviors toward the international community, inferred from the nature of their alliances, or that have connections with criminal or terrorist organizations or individuals associated with them;

b) The suitability of the structure resulting from the legal act or operation, taking into account the methods of financing the acquisition and the acquirer's economic, financial, technical, and organizational capacity to ensure:

1) The security and continuity of supply;

2) The maintenance, security, and operation of networks and facilities.

b-bis) For the operations referred to in paragraph 5, in addition to the threat of serious prejudice to the interests referred to in paragraph 3, the risk to security or public order is also assessed.

7-bis. For the purpose of exercising the special powers under this article, the establishment of a company that carries out activities or holds one or more of the assets identified under paragraph 1 or paragraph 1-ter must be notified to the Presidency of the Council of Ministers within the deadlines and according to the procedures set forth in this article, if one or more shareholders, external to the European Union as defined in paragraph 5-bis, hold a share of at least 10% of the voting rights or capital.

8. In cases where the activities of strategic relevance identified by the decrees under paragraph 1 pertain to companies directly or indirectly participated in by the Ministry of Economy and Finance, the Council of Ministers, for the purpose of exercising the special powers referred to in paragraphs 3 and 6, decides based on a proposal from the Minister of Economy and Finance, in consultation with the Minister of Economic Development and the Minister of Infrastructure and Transport, according to their respective competencies. The notifications referred to in paragraphs 2 and 5 are immediately transmitted by the Presidency of the Council of Ministers to the Ministry of Economy and Finance.

8-bis. In the event of non-compliance with the notification obligations under this article, even in the absence of the notification referred to in paragraphs 2, 2-bis, and 5, the Presidency of the Council of Ministers may initiate proceedings for the potential exercise of special powers. In this case, the deadlines and procedural rules provided in this article, as well as in the regulation referred to in paragraph 9, apply. The forty-five-day deadline mentioned in paragraphs 4 and 6 begins from the conclusion of the procedure for determining the violation of the notification obligation.

9. By regulation, adopted under Article 17, paragraph 1, of Law no. 400 of August 23, 1988, and subsequent amendments, after consultation with the competent parliamentary committees, upon the proposal of the Minister of Economy and Finance, in agreement with the Minister of Foreign Affairs, the Minister of the Interior, the Minister of Economic Development, and the Minister of Infrastructure and Transport, and after consulting the relevant independent authorities, where applicable, provisions for implementing this article are issued. These provisions also cover the organizational procedures for carrying out activities leading to the exercise of special powers, using the available human, instrumental, and financial resources without imposing new or greater burdens on the state budget. The opinion on the draft regulation must be expressed within twenty days from the date of its submission to the Chambers. After this period, the regulation may still be adopted. If the opinions expressed by the competent parliamentary committees have identical content, the Government, if it does not intend to follow them, must resubmit the draft regulation to the Chambers, explaining the reasons in a special report. The final opinions of the competent committees must be expressed within twenty days from the date of transmission. After this period, the regulation may still be adopted. Until the adoption of the regulation, the responsibilities regarding proposals for exercising the special powers referred to in paragraphs 3 and 6, and the resulting activities, referred to in paragraphs 4 and 6, are assigned to the Ministry of Economy and Finance for companies in which it holds shares, or, for other companies, to the Ministry of Economic Development or the Ministry of Infrastructure and Transport, according to their respective competencies

UPDATE (2)

Legislative Decree no. 148 of 16 October 2017, converted with amendments by Law no. 172 of 4 December 2017, provided (with Article 14, paragraph 1, letter b)) that in paragraph 2 of this article, after the words "Any resolution, act or transaction, adopted by or against a company that holds one or more of the assets identified pursuant to paragraph 1", the following "or 1-ter" are added". It has also provided (with art. 14, paragraph 2) that these amendments apply only to procedures initiated after 16/10/2017.

UPDATE (6)

Legislative Decree no. 105 of 21 September 2019, converted with amendments by Law no. 133 of 18 November 2019, provided (with Article 4-bis, paragraph 1, letter c)) that in paragraph 2, first sentence of this article, the words: "or 1-ter" are deleted. It also provided (with Article 4-bis, paragraph 2) that "The provisions introduced by paragraph 1 of this article, with the exception of those referred to in the same paragraph 1, letter d), paragraph of Article 2-ter, shall also apply to proceedings in progress on the date of entry into force of the law converting this decree; the terms not yet expired on the same date, without prejudice to the date of the beginning of their course, shall be extended until the duration established by this article is reached, if greater than that previously envisaged".

UPDATE (10)

Legislative Decree no. 82 of 14 June 2021, in amending art. 4-bis, paragraph 1, letter c) of Decree-Law no. 105 of 21 September 2019, converted with amendments by Law no. 133 of 18 November 2019, consequently provided (with art. 16, paragraph 6, letter a)) that "In the perimeter decree-law: a) any reference to the Ministry of Economic Development and the Presidency of the Council of Ministers, wherever it occurs, it is to be understood as referring to the National Cybersecurity Agency".

UPDATE (12)

Decree-Law No. 21 of 21 March 2022, converted with amendments by Law No. 51 of 20 May 2022, provided (with Article 25, paragraph 2) that "The provisions of Article 2, paragraph 5, second sentence, of Decree-Law No. 21 of 2012, converted, with amendments, by Law No. 56 of 2012, introduced by paragraph 1, letter c), number 2, shall take effect from 1 January 2023".

UPDATE (14)

Legislative Decree No. 50 of 17 May 2022, converted with amendments by Law No. 91 of 15 July 2022, provided (with Article 57, paragraph 1) that "Without prejudice to the provisions of paragraph 2, the provisions of Articles 6 and 7 shall apply to proceedings in progress on the date of entry into force of this decree".

Art. 2-bis (Collaboration with sectoral administrative authorities).

1. The Bank of Italy, the National Commission for Companies and the Stock Exchange (CONSOB), the Pension Funds Supervision Commission (COVIP), the Insurance Supervisory Institute (IVASS), the Transport Regulation Authority (ART), the Italian Competition Authority (AGCM), the Communications Regulatory Authority (AGCOM), the Energy, Networks and Environment Regulatory Authority (ARERA), and the coordination group established pursuant to Article 3 of the decree of the President of the Council of Ministers of August 6, 2014, cooperate with each other, including through the exchange of information, in order to facilitate the exercise of the functions referred to in this decree. The authorities listed in the first sentence, solely for the purposes indicated in that sentence, cannot invoke professional secrecy against the coordination group. (6)

2. In order to collect information useful for the application of Articles 1, 1-bis and 2, the Coordination Group established pursuant to Article 3 of the Decree of the President of the Council of Ministers of 6 August 2014 ((, as well as the one referred to in Article 1-bis of this Decree,)) may request public administrations, public or private bodies, companies or other third parties who are in possession of such data, to provide information and to produce documents.

2-bis. In the exercise of the functions provided for in this decree, the Presidency of the Council of Ministers may rely on the collaboration of the Guardia di Finanza, according to procedures to be defined through a specific memorandum of understanding and without imposing new or additional costs on public finances. In carrying out the activities mentioned in the first sentence, and without prejudice to the provisions of Article 2 of Legislative Decree no. 68 of March 19, 2001, the Guardia di Finanza officers may also use the powers and authority provided for in Article 9 of Legislative Decree no. 231 of November 21, 2007.

3. For the same purposes referred to in paragraph 2, the Presidency of the Council of Ministers may stipulate, without new or increased burdens on public finances, agreements or memoranda of understanding with research institutes or bodies, as well as with other administrations.

UPDATE (6)

Legislative Decree no. 105 of 21 September 2019, converted with amendments by Law no. 133 of 18 November 2019, provided (with art. 4-bis, paragraph 2) that "The provisions introduced by paragraph 1 of this article, with the exception of those referred to in the same paragraph 1, letter d), paragraph Art. 2-ter, also apply to proceedings in progress on the date of entry into force of the law converting this decree; the terms not yet expired on the same date, without prejudice to the date of the beginning of their course, shall be extended until the duration established by this article is reached, if greater than that previously envisaged".

Art. 2-ter (Adaptation of national legislation to the provisions of Regulation (EU) 2019/452 and deadlines for the exercise of special powers)

1. Where a Member State or the Commission notifies, in accordance with Article 6(6) of Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019, its intention to comment or issue an opinion in relation to a foreign direct investment which is the subject of an ongoing procedure, the time limits for the exercise of the special powers referred to in Articles 1 and 2 shall be suspended until the State has received its comments Member or opinion of the European Commission. If the opinion of the European Commission is subsequent to the observations of the Member State, the time limits for the exercise of the special powers shall resume from the date of receipt of the Commission's opinion. The time limits for the exercise of special powers shall also be suspended in the event that the Government, pursuant to Article 6(4) of the aforementioned Regulation (EU) 2019/452, requests the Commission to issue an opinion or the other Member States to submit observations in relation to an ongoing proceeding under this Article. This is without prejudice to the possibility of exercising the special powers even before receipt of the Commission's opinion or Member States' observations, in cases where the protection of national security or public order requires the adoption of an immediate decision pursuant to Article 6(8) of Regulation (EU) 2019/452.

2. By regulation issued pursuant to Article 17(2) of Law No 400 of 23 August 1988, on the proposal of the President of the Council of Ministers, in agreement with the Minister for the Economy and Finance and, for their respective areas of competence, with the Ministers of Foreign Affairs and International Cooperation, of the Interior, of Defence, of Economic Development and of Infrastructure and Transport, as well as with the Ministers responsible for each sector, the terms referred to in Articles 1 and 2 of this decree may be re-regulated, in order to identify simplified procedures, taking into account the degree of potential prejudice to the essential interests of defence, national security and public order, including those relating to the security and operation of networks and installations and continuity of supply, as well as the need to ensure the harmonisation of national procedures with those relating to the control, exchange of information and cooperation mechanisms established pursuant to Regulation (EU) 2019/452.

3. The contact point referred to in Article 11 of Regulation (EU) 2019/452 shall be established at the Presidency of the Council of Ministers. The organisation and operation of the contact point shall be governed by decree of the President of the Council of Ministers, adopted pursuant to Article 7 of Legislative Decree no. 303 of 30 July 1999, within the scope of the human, instrumental and financial resources available under current legislation and without new or increased burdens on public finances.

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UPDATE (10)

Legislative Decree no. 82 of 14 June 2021, in amending art. 4-bis, paragraph 1, letter d) of Decree-Law no. 105 of 21 September 2019, converted with amendments by Law no. 133 of 18 November 2019, consequently provided (with art. 16, paragraph 6, letter a)) that "In the perimeter decree-law: a) any reference to the Ministry of Economic Development and the Presidency of the Council of Ministers, wherever it occurs, it is to be understood as referring to the National Cybersecurity Agency".

Art. 2-quarter (Measures to simplify procedures and pre-notification)

1. By decree of the President of the Council of Ministers, after consulting the coordination group set up pursuant to Article 3 of the Decree of the President of the Council of Ministers of 6 August 2014, also by way of derogation from Article 17 of Law No 400 of 23 August 1988, measures may be identified to simplify the notification procedures, terms and procedures relating to the investigation for the purposes of the possible exercise of the powers referred to in Articles 1, 1-bis and 2, without the need for a resolution of the Council of Ministers, for the definition of the procedures in the event of failure to exercise the special powers decided unanimously by the members of the coordination group, without prejudice in any case to the possibility for each administration and for the parties to request to submit the examination of the notification to the Council of Ministers.

2. The same decree referred to in paragraph 1 shall identify the procedures for submitting a pre-notification allowing the examination by the coordination group, or in the cases referred to in paragraph 1 of the Council of Ministers, of the transactions, prior to the formal notification referred to in Articles 1 and 2, in order to receive a preliminary assessment of the applicability of the aforementioned articles and the authorisability of the transaction.

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2-bis. By decree of the President of the Council of Ministers, to be adopted in accordance with the procedures referred to in paragraph 1 within ninety days of the date of entry into force of this provision, the mechanisms for linking the notification obligation and tender procedures and the measures to simplify the notification methods, terms and procedures relating to the investigation of the procedures falling within the scope of application of this decree in the event of the award of concessions, including those of regional competence

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Art. 3 Repeals and general and transitional provisions

1. Without prejudice to the provisions of Article 1, paragraph 1, letter c), and Article 2, paragraph 6, the acquisition, for any reason, by an entity outside the European Union as defined in Article 2, ((paragraph 5-bis)), of shareholdings in companies that hold one or more of the assets identified as strategic pursuant to Article 1, paragraph 1, ((and Article 2, paragraphs 1 and 1-ter)), is allowed on condition of reciprocity, in compliance with international agreements signed by Italy or the European Union. ((6))

2. Article 2 of Decree-Law No 332 of 31 May 1994, converted, with amendments, by Law No 474 of 30 July 1994, as amended, paragraphs 228 to 231 of Article 4 of Law No 350 of 24 December 2003, and the Decree of the President of the Council of Ministers of 10 June 2004, published in the Official Gazette No 139 of 16 June 2004, shall cease to have effect, with reference to the individual sectors, as from the date of entry into force of the decrees, relating to each sector, referred to in Article 1, paragraph 1, ((and of the decrees, relating to each sector, referred to in Article 2, paragraphs 1 and 1-ter, of this decree)) . The aforementioned provisions shall in any case be repealed as from the date of entry into force of the last of the decrees ((...)) referred to in the first sentence that complete the identification of the sectors. Any non-voting directors appointed pursuant to the aforementioned Article 2 of Decree-Law No. 332 of 1994, converted, with amendments, by Law No. 474 of 1994, as amended, and in office on the date of its repeal shall cease to hold office at the end of their term of office. ((6))

3. The provisions conferring special powers contained in the Decree of the President of the Council of Ministers of 28 September 1999, published in the Official Gazette No 240 of 12 October 1999, and in the decrees of the Minister of the Treasury, shall cease to have effect from the date of entry into force of the decrees referred to in Article 1(1). of the budget and economic planning on 8 November 1999 and the clauses of the Articles of Association that are incompatible with the rules established by this decree on special powers.

4. The provisions conferring special powers contained in the decrees of the President of the Council of Ministers of 5 October 1995 and 21 March 1997, published in the Official Gazette No 70 of 25 March 1997, shall cease to have effect from the date of entry into force of the regulations referred to in Article 2(1). on 17 September 1999, published in the Official Gazette no. 225 of 24 September 1999, and on 23 March 2006, published in the Official Gazette no. 79 of 4 April 2006, and in the decrees of the Minister of the Treasury dated 5 October 1995, on 16 October 1995, on 21 March 1997, published in the Official Gazette no. 70 of 25 March 1997, and on 24 March 1997, published in the same Official Gazette, as well as in the decrees of the Minister of the Treasury, Budget and Economic Planning of 17 September 1999, published in the Official Gazette no. 237 of 8 October 1999, and of the Minister of Economy and Finance on 17 September 2004, published in the Official Gazette no. 234 of 5 October 2004, and on 1 April 2005. The clauses on special powers in the company bylaws also cease to be effective from the same date.

5. The following amendments shall be made to Article 3(1) of Decree-Law No 332 of 31 May 1994, converted, with amendments, by Law No 474 of 30 July 1994, as subsequently amended:

(a) the words: "Companies operating in the sectors referred to in Article 2" shall be replaced by the following: "Companies operating in the defence and national security, energy, transport, communications and other public services sectors";

(b) the words: "for the companies referred to in Article 2" shall be replaced by the following: "for companies operating in the defence and national security, transport, communications, energy and other public services sectors".

6. In Article 119(1) of the Code of Administrative Procedure, referred to in Annex 1 annexed to Legislative Decree No 104 of 2 July 2010, the following shall be inserted after point (c): "(c-bis) measures adopted in the exercise of special powers relating to activities of strategic importance in the defence and national security sectors and in the energy sectors, of transport and communications;".

7. In Article 133(1) of the Code of Administrative Procedure, referred to in Annex 1 annexed to Legislative Decree No 104 of 2 July 2010, the following shall be added at the end after point (z-quarter): "(z-d) disputes relating to the exercise of special powers relating to activities of strategic importance in the defence and national security sectors and in the energy sectors, of transport and communications;".

8. In Article 135(1) of the Code of Administrative Procedure, referred to in Annex 1 annexed to Legislative Decree No 104 of 2 July 2010, point (h) shall be replaced by the following: "(h) disputes relating to the exercise of special powers relating to activities of strategic importance in the defence and national security sectors and in the energy sectors, of transport and communications;".

8-bis. For matters not provided for in this decree, the provisions of Law no. 689 of 24 November 1981 shall apply to administrative fines. In any case, the reduced payment referred to in Article 16 of Law No. 689 of 24 November 1981 does not apply. Evaluaciones (2)

UPDATE (2)

Legislative Decree no. 148 of 16 October 2017, converted with amendments by Law no. 172 of 4 December 2017, provided (with art. 14, paragraph 2) that this amendment applies only to procedures initiated after 16/10/2017. -----

UPDATE (6)

Legislative Decree no. 105 of 21 September 2019, converted with amendments by Law no. 133 of 18 November 2019, provided (with art. 4-bis, paragraph 2) that "The provisions introduced by paragraph 1 of this article, with the exception of those referred to in the same paragraph 1, letter d), paragraph Art. 2-ter, also apply to proceedings in progress on the date of entry into force of the law converting this decree; the terms not yet expired on the same date, without prejudice to the date of the beginning of their course, shall be extended until the duration established by this article is reached, if greater than that previously envisaged".

Art. 3-bis ((Annual Report to the Chambers))

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1. Starting from the year following the year in progress on the date of entry into force of the law converting this decree, the President of the Council of Ministers shall submit to the Chambers, by 30 June of each year, a report on the activities carried out on the basis of the powers conferred by this decree, with particular reference to the specific cases and public interests that motivated the exercise of those powers

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Art. 4 Financial invariance clause

1. The implementation of this decree shall not result in new or increased burdens on the State budget. The activities envisaged by this decree are carried out by the Administrations concerned within the scope of the human, financial and instrumental resources available under current legislation.

Art. 5 Entry into force

1. This decree shall enter into force on the day following that of its publication in the Official Gazette of the Italian Republic and shall be submitted to the Chambers for conversion into law.

This decree, bearing the seal of the State, shall be included in the Official Collection of Normative Acts of the Italian Republic. It is the obligation of whoever is responsible to observe it and to ensure that it is observed.

Given at Rome, 15 March 2012

NAPOLITANO

Monti, Prime Minister and Minister of Economy and Finance

Moavero Milanesi, Minister for European Affairs

Cancellieri, Minister for the Interior

Di Paola, Minister of Defence

Terzi di Sant'Agata, Minister for Foreign Affairs

Passera, Minister for Economic Development and Infrastructure and Transport

Seen, the Keeper of the Seals: Severino

* * *