



•ALERT•

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# Golden Power and new special powers related to 5G technology

**The Legislative Decree no. 21 of March 21, 2022 (the "d.l.") has, once again, modified the Golden Power regulations.**

In particular, the d.l. has radically innovated the Golden Power regulation in the field of broadband **electronic communication based on 5G and cloud technology**, replacing the entire article 1-bis of d.l. no. 21 of March 15, 2012 (i.e. the Golden Power legislation).

The innovation provided for by the d.l. is extremely relevant not only in M&A transactions but also within the contractual relationship between companies operating in the sector of interest.

First of all, article 28 of the d.l. specifies in its paragraph 1 that "broadband electronic communication services based on 5G technology constitute activities of strategic importance for the national defense and security system"; and authorised the Italian Government to include further the services, goods, relationships, activities and technology relevant to cybersecurity (including cloud technologies) within the field of application of the Golden Power legislation.

As a consequence, a series of obligations have been imposed by the d.l. for **all companies (including Italian ones) operating in the sector of electronic communications based on 5G technology**.

In particular, companies that intend to acquire, **by contracts or agreement of any kind and nature**:



- **goods or services** related to the design, implementation, maintenance and management of electronic communication services based on 5G technology;
- **technology-intensive components** functional to the realization and/or management of electronic communication services based on 5G technology;

**shall notify**, prior to the acquisition of said goods, services and/or components to the Presidency of the Council of Ministers an **annual plan** (which shall be re-transmitted annually), which shall include:

- the sector interested in the notification;
- detailed identification information of the notifying party;
- the purchasing program;
- detailed identification information of the relevant (also potential) suppliers;
- detailed description (including technical information) of the technology-intensive goods, services and components;
- complete information on the contracts in progress and on the development prospects of the 5G network and/or of the other assets in the future indicated by the Government;
- any further information that provides a detailed picture of the development modalities of the digitalization systems of the notifier, as well as of the exact fulfilment of the conditions and prescriptions eventually imposed within previous notifications;

- complete information on any notifications made for the awarding of contracts for the supply of ICT goods, systems and services to be used on the networks, information systems and for the performance of IT services of public administrations.

The plan can be updated by the notifier infra-annually on a four-monthly basis, following a further notification to the Presidency of the Council.

Upon receipt of notification, the Government has a period of 30 days (which may be extended by up to 20 days and, once only, by a further 20 days in cases of complexity of the transaction) to approve the plan or to impose prescriptions and conditions for its approval.

In case of silence by the Government, the plan is considered approved without conditions/prescriptions.

If the notifying party executes the contracts or agreements included in the notification, before having obtained the government authorisation or fails to comply with the prescriptions and/or conditions imposed:

- the Government might apply an **administrative fine up to the 3% of annual turnover**;
- the **executed contracts/agreements are null and void** and the Government may order to the enterprise **to restore the situation prior to the execution of the contracts/agreements** at its own expenses;
- the Government may order to the enterprise **to restore the situation prior to the violation at its own expense**; and

- the Government may apply an **administrative fine up to 1/12 of that provided pursuant to point (i) for each month of delay in restoring the situation prior to the violation or prior to the execution of contracts/agreements**.

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