



•ALERT•

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FDI / Golden Power: Critical Raw Materials

The Italian government, at the strong initiative of the EU Commission, has recently brought its attention - also through the procedural investigation in the context of FDI/Golden Power filings - to one of the issues expressly indicated as today of greatest relevance by the EU and Italian FDI / Golden Power regulations: the so-called **Critical Raw Materials** ("CRM" defined as to type, activities and relevant Industries, by EU Commission Communication No. 474/2020 Final "EU CRM Communication").

The regulatory framework consists of: Reg. (EU) 2019/452 (establishing a framework for the control of foreign direct investment in the Union) which in Art. 4.1.c identifies as a "critical factor" the " security of supply of critical inputs, including **and raw materials**", Italian DPCM No. 179/2020 which provides for the " *Regulations for the identification of assets and relations of national interest in the areas referred to in Article 4(1) of Regulation (EU) 2019/452.....in accordance with Article 2, paragraph 1-ter*" of the Golden Power Law and which in Art. 11.1.a provides that the critical factors for the purposes of the Golden Power legislation - and therefore **an area of attention for the verification of whether a transaction falls within the Golden Power perimeter** - include "the supply of raw materials referred to in the Communication from the Commission to the European Parliament on the review of critical raw materials for the EU and the implementation of the raw materials initiative, dated September 13, 2017 COM (2017) 490" (now updated by *Commission Communication EU No. 474/2020 Final*).

The EU CRM Communication contains within it two useful tables that help to identify the "**critical factor**" for FDI/**Golden Power purposes** by cross-referencing three sub-factors: (1) a list of (critical) raw materials, (2) relevant activities (essentially extraction and/or processing) and (3) reference industries (e.g. among others, chemical, pharmaceutical and medical devices, automotive, aerospace, etc....). The combination of the factors leads to a potentially very broad and transversal application of the CRM concept and therefore to the need for a careful analysis of the traceability under the objective profile of an operation (subject to subjective profiles, of course) in the FDI/Golden Power perimeter precisely in accordance with the aforementioned art. 11.1 of DPCM No. 179/2020. In addition, given the relevance and sensitivity of the matter under the EU profile, it seems well possible that FDI/Golden Power notifications in Italy that have as their object what is provided for here find the reason for the circularization among the FDI authorities of the individual EU countries and towards the EU Commission of the notification, with the known consequences in terms of temporal extension of the procedure.

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