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“Golden Power” regulation: Foreign Direct Investment as a crucial key factor for global economic development

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CHAPTER 1: INTRODUCTION OF THE CONTEXT

1.1 Background and context of FDI and Golden Power regulation

The dynamics of globalization have permanently changed the field of international economic markets in an era of unparalleled interconnection between companies, intended as industries, and the safeguard of the Sovereign interests. The latter trend has resulted in an extraordinary growth of multinational enterprises, creating a complex of global networks of supply chains and financial cash flows. This phenomenon has aroused worries about national security, enables governments to meddle in the affairs of companies declared as "strategic" and establish control over key sectors of the economy like technology, transport, telecommunications, and energy through a regulation generally called "Golden Power". The emergence of developing the latter framework represents a global objective that is essential to achieve for the incorporation of some economic key sectors in a country's national security framework. It is also essential to raise an issue related to the conflict between the need to protect the strategic industries of a Country and the desire to liberalize markets eliminating the national control of them.

Thanks to Foreign Direct Investment (a specific type of cross-border transaction[1]) the direct investor makes an effort to establish a long-term stake in an enterprise settled in an economy different than his own. This person's main goal is to influence the management by its controlling stake in decision making process, about primary interest operations, including all situations in which the fiduciary duties of directors are not sufficient to assure a correct management of decision making related to the interests of the shareholders' for the target company within the limits of article 2364, paragraph 1, n. 5 of the Italian Civil Code (they can trigger only management acts which are not providing substantial amendment of the corporate purpose included in the company by-laws or significant modification of the shareholders' rights). The fundamental characteristic that sets apart foreign direct investments from international portfolio investments is the incentive and the intent of the investor of controlling or influencing an enterprise (characteristic of FDI operations).

[1] Sacco Ginevri, "a cross-border transaction occurs when the involved companies are incorporated under the rules of different jurisdictions.", Commentaries and Cases on Italian Business Law. Chapter on Cross-Border Transactions, page 175 et seq. (July 2021).

The world economy was severely impacted by the Lockdown period. Governments everywhere are still attempting to manage the pandemic's effects almost a year after it first started, all the while keeping the safeguard of the economy from all points of view. Under these conditions, it is anticipated that FDI will be essential to assisting jurisdictions in their recovery. Global economies have historically relied heavily on foreign investment as a source of revenue. The European Union. for instance, claims that foreign investment accounts for 45% of its GDP (EY official data). Initially, FDI screening was restricted to strategically important industries like media pluralism, security and military defense and was only applied to a small number of industrialized EU nations. Since the FDI phenomenon has been more prevalent recently, many of these nations have increased the scope of their FDI screening programs, and those that did not previously have one are beginning to implement the latter.

The term "special powers," denoted as the "golden power," encompasses various prerogatives, including the authority to stipulate specific conditions for the acquisition of shareholdings, the ability to veto certain corporate resolutions, and the capacity to oppose the procurement of shareholdings. The underlying objective of this provision is to align national regulations governing the government's special powers with European law. This alignment is particularly pertinent to the legal frameworks of the "Golden Share"[2] in the United Kingdom legal system and the "Action Spécifique" in the French legal system. Historical instances of censure by the European Commission and condemnation by the EU Court of Justice have prompted a reformulation of these regulatory measures.

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[2] Cambridge Business Eng Dictionary define a golden share as a unique kind of stock in a firm that grants its owner greater control over management decisions than other shareholders. In the European Union, golden shares that governments possessed to exert influence over specific enterprises are no longer permitted. The golden share of the Italian government prevented a takeover of the energy powerhouse; Dizionario Treccani define a golden share in Italy (Added to our framework in the 1990s through law number. 47/94), as a shareholding which permits the State to keep a stake "with the right of veto on crucial business choices" in the event that public firms are privatized.

In finding criteria for the compatibility of special powers regulation within the European community, the European Commission issued a specific communication. Within the latter (it will be explained deeper in the next section), the Commission asserted that the exercise of such powers must be unprovided of discrimination and permissible only when applied on "objective, stable, and publicly disclosed criteria". Furthermore, the Commission stipulated that the justification for the exercise of special powers must cover reasons of general interest for the national security and with the aim of addressing specific sectors of intervention: The Commission accepted that investors from other Member States might be subject to a separate regime, provided that the reasons for this divergence are related to public health, public safety, and public order. Notably, this permission is subject to adherence to the Court of Justice's jurisprudential position, which prohibits interpretations based purely on economic factors[3].

Beyond the EU jurisdiction, only a few countries have chosen to adopt rules to protect themselves from foreign investors. The must responsible and careful about this theme are: Canada (FDI require Canadian Government approval after a mandatory notification set by the investor), Australia (The Treasurer of the Commonwealth of Australia is the authority with the power to "call-in" transactions that are not notifiable) and obviously US (under a regime set out by the Committee on Foreign Investment in the United States, or CFIUS)[4].

In conclusion, the concept of Golden Power, a mechanism authorizing governments to intervene in foreign direct investments deemed critical for national security as a crucial aspect in the regulatory frameworks of both the European Union (EU) and the United

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[3] Camera Dei Deputati XVII legislatura, La disciplina del Golden Power - quadro normativo (2018), available on:
https://temi.camera.it/leg17/post/la_disciplina_del_golden_power__quadro_normativo.html

[4] See more on Ernst & Young official website in the article: "Why understanding FDI obligations is critical for global organizations" by Cornelius Grossman (Apr, 2021) at:
https://www.ey.com/en_gl/law/why-understanding-fdi-obligations-is-critical-for-global-organizations

States. As we delve into the subsequent paragraph, we will explore the characteristics and implications involving Golden Power, taking attention on its significance in the broader context of FDI governance. Our objective is to acquire a deeper comprehension of how the EU and the USA manage the fine line between accepting foreign investments and defending domestic interests by analyzing their respective regulatory environments. To provide a deeper understanding of the complex relationship between international capital flows and national security, this investigation is crucial for analyzing the dynamics of changing about global economic interactions between different economies and countries.

1.2 Treating of the Regulation at European level and by United States CFIUS

More frequently, "Golden Power" refers to the European nations, such as France and Italy, whose governments have choose to create a regulation aligned with the European one. In case of absence of an own framework, the Countries can always directly follow those provided by the EU level[5]. The latter was in force from 11 October 2020 aimed to develop a communitarian coordination without let renounce to the flexibility of the Member States in deciding the specific situation to trigger the FDI screening. It is important because, as a consequence, encourages the creation of new jobs and decreases the unemployment rate, creating economies of scale for strategic companies: this allows an increase in exports from Europe and indirectly supports the EU Investment Plan program, increasing the overall competitiveness of the Continent in the World economy.

1.2.1 The European framework and the Commission Communication as a consequence of Covid-19

While the Article 1 of the EU regulation was written with the aim of explaining the objectives of the cooperation between the member states, the Article 4 is directly considering the main elements that can damage the public security in case of foreign investments that are:

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[5] EU Regulation No. 2019//452 of the European Parliament and of the Council, dated 19 March 2019, for "establishing a common framework for FDI screening into the Union" – see more on OECD document: https://www.oecd.org/investment/investment-policy/oecd-eu-fdi-screening-assessment.pdf

a) The safeguard of critical infrastructure (even tangible than digital) as energy, transport, communication, media, data processing, aerospace, defense and security and many others;

b) The protection of critical technologies including artificial intelligence, cybersecurity, semiconductor, robotics, quantum and nuclear energy, nanotechnologies and biotechnologies;

c) The incentive of the supply of some inputs as food and raw materials;

d) The safeguard of information about personal data collected by companies on their customers (privacy of clients);

e) Ensure a freedom of expression for the pluralism of media.

It is also worth to note that the paragraph 2 of the article 2[6] take attention on the state-owning of the foreign investor (directly and indirectly by public companies or also by the national Army) under the jurisdiction of a third country and also if the latter is already triggering transactions which are affecting the security of the specific or about other Member States (this is considered as non-legal activity by the buyer).

[6] Pursuant the Article 2 of the Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 the foreign investor is: "a third-country natural person or a third-country undertaking entity, which is planning to trigger or is considering the intention of making a foreign direct investment against a target company considered strategic for the national security of the specific Member State." See more on European Union Law (Eur-Lex) official website at: https://eur-lex.europa.eu/eli/reg/2019/452/oj

There is also the possibility of the carry out of a transaction from abroad that can damage the public order in different Member States of the European Union. In this case, all the interested countries have the duty to send a notification to the EU Commission for the screening and the emission of a mandatory comment about the FDI operation (see Article 6 of the framework). Pursuant the article 7 the Commission have also the power to issue other comments about transaction occurred in a Member State that is not valuing the latter operation as dangerous for its public order and it might not trigger the FDI screening process in autonomy (it could be considered strategic for the European Union interests).

However, it is important to remember that the Union Regulation might not provide prejudice to the independence of the Member State about FDI policy and restrictions in this field (it is explained through the article 65 with points a) and b)[7]). Contrariwise, the EU Commission had the aim of helping, not only the powerful Countries of the Union but also the weakest ones, in particular as a consequence of Covid-19 outbreak (but also before the Pandemic in general, to protect the interest of countries not covered by a regulation). For this reason, it was carry out the Communication on March 25, 2020 asking the Member State of using all possible Foreign Direct Investments screening mechanisms provided by their Governments and, in case of absence of the latter, inviting this countries to adopt these provided by the European Union Council following the EU law and certainly the international standards.

The main risk that the Member States had to cover was about the so called "predatory buying" related to possible aggressive takeovers coming from outside the Eurozone (always about the safeguarding of the sectors that were considered strategic by the

[7] More details on article 65 FTEU about point b) which take into account all necessary steps to prevent violations of national laws and regulations, particularly those pertaining to taxation and the prudential supervision of financial institutions; it establishes protocols for the reporting of capital movements for administrative or statistical purposes and take actions that are deemed necessary for the protection of public policy or security; and point a) which take attention about situation of taxpayers in their country residence or in the place in which they are planning their investments. See more on European Union Law (Eur-Lex) official website at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12016E065

Governments). The latter fact was a dangerous consequence of the Covid-19 on the financial and stock markets, in fact it increased volatility in market value of many strategic companies. (the intrinsic value of the firm was not reflected in a realistic way in the market value of the latter in the stock markets). The principal objective pursued by the European Union Communication was the protection of the most important companies working in the Continent through the defense of their primary assets and their developed advanced technology.

At this point all countries decided to use regulations and provisions about FDI screening (both temporary that permanent provisions). For instance, Italy was one of the faster nations in implementing these rules in the national framework (December,30, 2021) making mandatory the notification to the National Government of all takeovers relating to controlling stakes overcoming the 10% of voting rights or of share capital about a target company deemed as strategic for the country's interests triggered by European investor, and also by a non-European investor that is exceeding a total value of 1 million euros or which are reaching thresholds as 15%, 20%, 25% and 50% in the target company.

The latter phenomenon will be explained in the next chapter which will go deeper through the Italian management and implementation of the Golden Power Regulation and also about the functioning of the notification in case of acquisition related to exceeding thresholds of strategic companies for the safeguard of Italian public order.

1.2.2 Committee on Foreign Investment in the United States as an alternative of Golden Power

There is no such law as the "golden power" rule in many nations, including the United States. Similar ideas might be covered by laws and rules pertaining to foreign investment, national security, or antitrust laws in the USA. For instance, an inter-agency group inside the US government called Committee on Foreign Investment in the United States (CFIUS) examines and looks into the potential effects on national security of foreign investments in US businesses or operations.

The most important elements are provided by Section 721 of the Defense Production Act of 1950, that was amended with a 1988 modification known as the Exon-Florio amendment, which gave the President the power to halt or forbid specific transactions. The Foreign Investment and National Security Act of 2007 (FINSA), which went into effect on October 24, 2007, and the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), which went into effect on August 13, 2018, both significantly changed Section 721[8].

The Committee on Foreign Investment in the United States plays an important role in defending the economy of the Country from the menace and weaknesses in the context of these operations. President Biden issued the Executive Order n. 14083 on September 15, 2022[9], providing the changing national security treatment in this ground. The latter identifies potential public order implications in important strategic sectors and adds to the list of variables that CFIUS currently takes into account when evaluating and managing risks affected these operations.

On August 13, 2018, FIRRMA (Foreign Investment Risk Review Act) was enacted. This legislation enhances and updates the Committee on Foreign Investment in the United States (CFIUS) to better tackle national security issues. It achieves this by expanding the powers of both the President and CFIUS to evaluate and respond to potential national security threats stemming from specific kinds of investments and real estate transactions with foreign investors. In the sequent January 13 of 2020, the USDT (United States Department of the Treasury) officially rolled out two final frameworks, with the aim of implementing the alterations brought about by FIRRMA to trigger the rules written by

[8] See more details on U.S. Department of the Treasury official website -Committee on Foreign Investment in the United States (CFIUS) Laws and Guidance available on https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius/cfius-laws-and-guidance

[9] See Federal Register / Vol. 87, No. 181 / Tuesday, September 20, 2022 / Presidential Documents about "Providing the Committee on Foreign Investment in the United States Gives Consideration to Changing National Security Risks" available on US Government website in the following document: https://www.govinfo.gov/content/pkg/FR-2022-09-20/pdf/2022-20450.pdf

the Committee on Foreign Investment in the United States (CFIUS). These regulations were presented into two forms which entered in force on February 13 of 2020[10].

1.3 Research questions and analysis of topic's gap

The main objectives of this work are related to the comprehension of how different countries, and more specifically Italy, are treating and implementing this Regulation in their national framework, finding the most important key sectors of the economies and also, but not less important, explaining the behavior of governments about Foreign Direct Investments Screening, with the aim of protecting public order against third countries "predatory buying" in particular during recession periods for firms affected by the crisis[11].

Another important phenomenon to take into account to demonstrate the assumptions concerns the inclusion of additional secondary sectors within those of interest to the State for safeguarding, such as the food industry in Italy, the watchmaking sector in Switzerland, and the extraction and trade of natural gas in countries like Russia. This issue is a direct consequence of globalization, which has led to the expansion of key sectors of the economy for a State, which initially considered only four industries in the early forms of Golden Power: national defense and security that was representing the most important strategic sector for State Members of the European Union (rules provided through the "Treaty on the Functioning of the European Union"[12]), and the other three sector triggered by the acquisition of an higher stake in companies which were related to energy, transport and communication industries.

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[10] See more on CFIUS Laws and Guidance document on United States Department of the Treasury official website available on: https://home.treasury.gov/system/files/206/FIRRMA-FAQs.pdf

[11] FDI Screening, official website of the European Union, more information available on https://trade.ec.europa.eu/accesstomarkets/en/content/fdiscreening#:~:text=The%20European%20framework%20for%20screening,public%20order%20in%20the%20EU.);

[12] Sacco Ginevri, Commentaries and Cases on Italian Business Law (second edition), chapter 23 on foreign direct investments by Lorenzo Locci, page 265 et seq. (July 2021)

It is obvious that the Governments have increased the measures and the tools about the control of the foreign direct investment in the recent years, in particular after the Covid-19 pandemic. The latter fact, that is already explained in the previous paragraph, has created some discrepancies in the financial markets and an undervaluation of many companies which could be targeted by a long-term or short-term speculation of foreign and institutional investors, generating high cash flows and earnings in the future for them (when the gap between intrinsic and market value of this firms will be covered at the end of the lockdown period). It is worth to note how this worries were raised also by the Italian Government, that has aligned his Golden Power framework with those of the European Union to protect its domestic industries, which were considered strategic, by every kind of cross-border M&A transactions triggered against the latters[13].

At the end of this brief introduction it is easy to understand what is the final topic of this research, based on trying to find the answer to a key question which is related to the existence or the non-existence and the consideration of sectors that the government does not deem as strategic still today. Our research journey will enter into the rationale behind the non-strategic designation of these sectors, providing an in-depth analysis to find aspects that can show their significance and potential for reevaluation to take into consideration by governmental policies for strategic purposes (to protect also this categories of companies by predatory foreign buyers).

The following chapters of this thesis will go deeper through the background of the "Italian Golden Power", not only analyzing the manifestation of itself in different environments (by their carry out in the national regulatory framework), but also evaluating how it is influencing investments from abroad and global markets. So the discussion will find a focus on the hard balance between State sovereignty jurisdiction and Foreign Direct Investments openness due to a liberalization of markets to assess the national industries safeguard by a careful examination of this gap.

The first part will highlight Italy's significance as an FDI destination, unraveling the factors and conditions that make the country an attractive choice for foreign investors.

[13] Sacco Ginevri, Commentaries and Cases on Italian Business Law (second edition), chapter 23 on foreign direct investments by Lorenzo Locci, page 264 et seq. (July 2021)

This exploration aims to provide a panoramic on the main aspects that position Italy on the global FDI environment. Subsequently, the next paragraph will provide a careful overview of the Italian Golden Power framework. This critical analysis will analyze the mechanisms in force that involve the Italian government to intervene in foreign investments, in particular taking into account those deemed crucial for national security. It is essential to comprehend the functioning of Italy's Golden Power strategy in order to fully understand the legislative framework controlling FDI and how it interacts with domestic interests. Finally, in the last section will concentrate on a comparative analysis, accosting Italy's methodology concerning FDI with approaches adopted by other countries. This comparative study seeks to unveil distinctive features, similarities, and differences in regulatory strategies illuminating the larger global background. This section have the aim of providing important insights into the complex nature of FDI governance by analyzing the ways in which Italy's approach meet or differs from those of the other countries.

So the next chapter will provide not only an overview of the country's treatment for foreign investors but also a detailed examination of the regulatory framework, with a particular focus on the Golden Power mechanisms and processes. Additionally, the comparative analysis will be focalized on the objective of placing Italy within and as the broader best wallpapers of global FDI regulation, contributing to a deeper understanding of the complexities that characterize international investment landscapes.

CHAPTER 2: IN-DEPTH ANALYSIS OF THE ITALIAN FRAMEWORK

2.1 Overview of Italian "Golden Share" regulation as a consequence of privatization

The main thing that brought the necessity of creating a Golden Power system in Italy was led by the privatization of public companies which were facing a recession period during the first part of 90'. In 1993, the approval of Italy's entry into the Monetary Union was secured through the signing of the Security Treaty by other European countries. This agreement entailed measures such as the reduction of public spending, the closure of unprofitable components of IRI, and the sale of legitimate portions of the state's industrial property patrimony on the market. These conditions played a crucial role in decreasing the public debt and in widening the gap between the Italian BTP, denominated in lire, and the German Bund, denominated in marks. The President of the Council, Carlo Azeglio Ciampi, and the general director of the Treasury, Draghi, developed a strong belief in the unification of currency as the final element of the community project. From a technical perspective, they would respond with precise measures to an external constraint, all the while sharing this commitment[14].

The process of Privatization was triggered through Law Decree n. 332 dated 31 May 1994, converted by Law n. 474 dated 30 July 1994. In Italy, the way used for the sale of shareholdings was identified as the public offering of shares. Following the example of France and the United Kingdom, special powers were established in favor of the State. According to Article 2 of Law Decree 332/1994[15], in the event of transfer of share control

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[14] See more about Italian privatization on Ilsole24ore in article "Fabiano Fabiani: quelle privatizzazioni del 1992, Finmeccanica e i no a Draghi" of Paolo Bricco (October 2020), available on:
https://www.ilsole24ore.com/art/fabiano-fabiani-quelle-privatizzazioni-1992-finmeccanica-e-no-draghi-ADEdDmu

[15] See the text of Law-Decree dated 31 May 1994 on Gazzetta Ufficiale della Repubblica Italiana available on:
https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=1994-07-30&atto.codiceRedazionale=094A4944

to the market, specific clauses were introduced in the statutes of companies subject to privatization operating in some specific sectors including:

- Defense and national security
- Transport sector,
- Telecommunications and energy sources sectors.
- Other public services.

The statutory clauses in question should have granted the Minister of the Treasury, in agreement with the Minister of Budget and Industry, one or more specific powers. These powers would have allowed the public entity to reserve the following prerogatives[16]:

1. The approval for the acquisition of significant shareholdings and the stipulation of shareholder agreements (as specified in letters a) and b) of article 2 of Law 474/1994).

2. The right of veto regarding resolutions concerning the liquidation of the company, the transfer of the company, mergers, demergers, the transfer of the registered office abroad, modifications to the corporate purpose and statutory amendments that eliminate or modify the same powers attributed to the Minister of the Treasury (as indicated in letter c) of article 2 of Law 474/1994).

3. The power to appoint an auditor, an administrator, or a number of members of the management body not exceeding a quarter of the members of the board of directors (as provided for in letter d) of article 2 of Law 474/1994).

[16] See more on Rivista di Diritto del Risparmio Fascicolo 3/2022 in chapter "L'introduzione della Golden Share in Italia: la Legge 30 luglio 1994, n. 474." Page 14 et seq., by M. Manna (March, 2022) direct by F. Greco

Another component of the British golden share model was the restriction on changing the section granting special rights while, in Italy, these powers were not connected to a particular class of shares. In our Country, a specific veto power had to be introduced, even if similar to the British one, which provided that public shareholder's special powers were justified by their origin in the ownership of specific shares, which made it impossible to amend these rights without the owner's approval. The latter was intended to stop the Minister of the Treasury's powers from being changed.

There were arouse various criticisms against the Italian model of the so-called special powers or golden shares. Unlike the other frameworks (UK and French), the authority of approval provided in section a) of article 2 of Law 474/1994 was not intended to block the entry of foreign shareholders into enterprises deemed strategically important for the Italian economy. Conversely, it was interpreted as a "simple approval" that would likewise apply to prospective Italian stockholders.

Additionally, the Minister of the Treasury, as an individual outside the corporate structure, was given the authority to provide this approval power as well as all other special authorities. Unlike the international models mentioned, the Treasury Ministry was not allowed to have any capital, even if it was only symbolic, in the divested company in a setting of significant privatization.

Regarding the extraordinary assembly's deliberations, which are required by the majority quorum, but never involving the majority of votes required for unanimity, there was clearly a conflict with the principle of equality of shares. This principle is implicitly sanctioned in our order by the first clause of Article 2348 of the Civil Code[17], as well as,

[17] [17] See the text of article 2348 of Italian Civil Code on Gazzetta Ufficiale della Repubblica Italiana available on: https://www.gazzettaufficiale.it/atto/serie_generale/caricaArticolo?art.versione=2&art.idGruppo=300&art.flagTipoArticolo=2&art.codiceRedazionale=042U0262&art.idArticolo=2348&art.idSottoArticolo=1&art.idSottoArticolo1=10&art.dataPubblicazioneGazzetta=1942-04-04&art.progressivo=0#:~:text=2348.,concerne%20la%20incidenza%20delle%20perdite.

on a Community EU level, by the Second CEE Directive[18] and, further ahead of schedule, by Article 54, Number 3, Letter g) of the Rome Treaty (today it is explained in Article 61 of the TFEU)[19].

In conclusion Italy's Golden Share system, implemented in the early '90s to face an economic recession that was hitting public companies, responded strategically to privatization challenges. Another important aspect to take into account was related to the approval of Italian entry into the Monetary Union in 1993 that triggered economic measures, including reduced public spending and asset sales. Specific State powers, such as share approval and veto authority, were granted through the Golden Share system but there were also many points of criticism emerged in assembly deliberations, challenging share equality in Italian law and conflicting with EU directives.

2.2 Italian Golden Power framework and FDI screening process

The instruments used for monitoring the special powers explained in the last paragraph, and subsequently granted to our Country Government to cover the criticism arouse in the previous years (FDI screening in sectors deemed as strategic for national interests) were carry out through Law Decree n. 21 dated 15 March 2012[20] (which was called in a simple

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[18] More details about Second CEE Directive, which take into account Council Directive 77/91/EEC of December 13, 1976 with the aim of harmonizing the corporate protections stipulated in each Member State under Article 58(2) of the Treaty. This serves to preserve the rights of shareholders and other interested parties with respect to the formation of joint stock companies, as well as the preservation and alterations of the company's share capital.
See more about Second CEE Directive on European Union Law (Eur-Lex) official website at:
https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=CELEX%3A31977L0091

[19] See more on Rivista di Diritto del Risparmio Fascicolo 3/2022 in chapter "L'introduzione della Golden Share in Italia: la Legge 30 luglio 1994, n. 474." Page 18, by M. Manna (March, 2022) direct by F. Greco

[20] More details on Law Decree n.21 dated 15 March 2012: "Having seen articles 77 and 87 of the Constitution; Having considered the extraordinary need and urgency to modify the regulatory discipline regarding special powers attributed to the State in the context of privatized companies, the subject of the infringement procedure no. 2009/2255 - at the decision stage of

way the "Law Decree"), after converted into Law n. 56 dated 11 May 2012[21] with amendments.

The aim of the Law Decree was aligning the Italian framework with the European one provided by the "Treaty of the Functioning of the European Union" in line with the decisions taken by the European Court of Justice.

The main objective of this Regulation was to affect not only the strategic companies concerning shareholding owned by the Italian Government, but also the others which were not provided of the latter participation of the State (to monitor the envisaged risk[22]). This phenomenon represented the real passage from Golden share system to Golden Power.

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appeal pursuant to Article 258 TFEU - as it violates the freedom of establishment and free movement of capital guaranteed by Treaty on the Functioning of the European Union (TFEU); See more on Gazzetta Ufficiale della Repubblica official website available on: https://www.gazzettaufficiale.it/eli/id/2012/03/15/012G0040/sg

[21] More details on Law n. 56 dated 11 May 2012 article 1: "Conversion into law, with amendments, of the legislative decree of 15 March 2012, n. 21, containing rules regarding special powers on corporate structures in the defense and national security sectors, as well as for activities of strategic importance in the energy, transport and communications sectors. See more on Normativa, Presidenza del Consiglio dei Ministri official website available on: https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2012-05-11;56!vig=

[22] See Sacco Ginevri, L'espansionismo del Golden Power fra sovranismo e globalizzazione, 1 RIVISTA TRIMESTRALE DEL DIRITTO DELL'ECONOMIA, page 151 et seq (2019), available at: www.fondazione capriglione.luiss.it
Pellegrini and Sacco Ginevri, il ruolo dello Stato nei settori strategici dell'economia, CORSO DI DIRITTO PUBBLICO DELL'ECONOMIA (directed by Pellegrini), Padova 453 et seq (2016)

It is worth to understand the notions that are explained in the article 1 and 2 of the Law Decree:

1. The first article specifies the main strategic sector that the Government have to safeguard about national defense and security;

2. The second has the aim of underlying other important strategic sectors for our economy, which are: energy, communication and transportation sector;

The latter framework was integrated with the Decree of the President of the Council of Ministers n. 108 dated 6 June 2014[23] and with the Presidential Decree n. 35 dated 19 February 2014[24], both concerning notions about the article 1.

Conversely, implemented with article 2 of Law Decree, there were Decree of the President of the Council of Ministers n. 180 dated 20 December 2014[25] and the Presidential Decree

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[23] More details on Decree of the President of the Council of Ministers n. 108 dated 6 June 2014: "Having seen article 117 of the Constitution; Having regard to paragraph 1 of Article 346 of the Treaty on the Functioning of the European Union, which allows Member States to adopt measures deemed necessary to protect the essential interests of their security, relating, inter alia, to the production and trade of weapons, ammunition or war material, intended for specifically military purposes". See more on Gazzetta Ufficiale della Repubblica Italiana official webisite available at: https://www.gazzettaufficiale.it/eli/id/2014/07/31/14G00120/sg%20

[24] More details on Presidential Decree n. 35 dated 19 February 2014: "article 1, paragraph 8 of the legislative order of March 15, 2012, n. 21 Regulates the identification of procedures for the activation of extraordinary capabilities in the defense and national security sectors." See more on Normativa, Presidenza del Consiglio dei Ministri official website: https://www.normattiva.it/uri-res/N2Ls?urn:nir:presidente.repubblica:decreto:2014-02-19;35

[25] More details on Decree of the President of the Council of Ministers n. 180 dated 20 December 2014: "Having viewed the legislative decree of March 15, 2012, n. 21, which was later amended and became law May 11, 2012, n. 56, which contained regulations regarding special powers on corporate structures in the defense and national security sectors as well as for strategically important activities in the energy, transport, and communications sectors, specifically in relation to article 2, paragraph 1; Having viewed Regulation (EU) no. 2019/452 of the European

n. 86 dated 25 March 2014[26] concerning the identification of assets in energy, communication and transportation industries and the linked procedures about screening processes related to the latter transactions.

2.2.1 Sectors deemed as "strategic" for Italian economy

In the case of defense and national security sector, there were included some activities that could trigger the use of special powers by the State concerning all resolutions taken by shareholders' meeting or by the management body of a strategic company as[27]:

i. Merger or de-merger of the latter;

ii. Transfer business, subsidiary or enterprise's branches;

iii. Not with less importance the transfer abroad of the registered office;

iv. Any amendment of company's purpose;

Parliament and of Council of March 19, 2019 establishing a framework for control of foreign direct investments in the Union; Having seen Regulation (EU) no. 347/2013 of the European Parliament and of Council of April 17, 2013 on guidelines for trans-European energy infrastructures". See more on Gazzetta Ufficiale della Repubblica Italiana official website available on: https://www.gazzettaufficiale.it/eli/id/2020/12/30/20G00200/sg

[26] More details on Presidential Decree n. 86 dated 25 March 2014: " This regulation outlines the procedures for carrying out the State's special powers with regard to the strategic assets in the fields of energy, transportation, and communications that have been identified in accordance with article 2, paragraph 1 of the legislative decree of March 15, 2012, n. 21, which was later amended by law 11 May 2012, n. 56, below, referred to as the "law decree.". See more on Gazzetta Ufficiale della Repubblica italiana official website available at: https://www.gazzettaufficiale.it/eli/id/2014/06/06/14G00098/sg

[27] Sacco Ginevri, Commentaries and Cases on Italian Business Law (second edition), chapter 23 on foreign direct investments by Lorenzo Locci, page 266 et seq. (July 2021)

v. Dissolution of the company;

vi. Amendment of by-laws provisions (pursuant article 2351, paragraph 3 of Italian Civil Code[28], and through article 3, paragraph 1 of Law Decree n. 332 dated 31 May 1994[29], converted by Law n. 474 dated 30 July 1994[30]);

vii. Transfer of any right of rem and use and assumptions of obligations about all material or immaterial assets of the company.

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[28] More details on article 2351, paragraph 3 of Italian Civil Code about: "resolutions taken using ordinary or preferred shares as also multiple voting rights shares", on Gazzetta Ufficiale della Repubblica Italiana official website available at: https://www.gazzettaufficiale.it/atto/serie_generale/caricaArticolo?art.progressivo=0&art.idArticolo=2351&art.versione=3&art.codiceRedazionale=042U0262&art.dataPubblicazioneGazzetta=1942-04-04&art.idGruppo=300&art.idSottoArticolo1=10&art.idSottoArticolo=1&art.flagTipoArticolo=2

[29] More details on article 3, paragraph 1 of Law Decree n. 332 dated 31 May 1994: "Regulations for expediting the process of selling off (dismission) the shares of state and public entities in joint-stock businesses.". See more on MEF, Dipartimento delle Finanze official website, available at: https://def.finanze.it/DocTribFrontend/getAttoNormativoDetail.do?ACTION=getSommario&id=%7B5CDCFF93-B94B-4BA5-86C1-38E34DA85E79%7D#:~:text=332%20%2D,pubblici%20in%20societa'%20per%20azioni.

[30] More details on Law n. 474 dated 30 July 1994: "With the revisions listed in the law's appendix, the decree-law of May 31, 1994, n. 332, which established guidelines for expediting the process of divesting State and public entities' stakes in joint-stock firms, becomes a law.". See more on Normativa, Presidenza del Consiglio dei Ministri official website available at: https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1994;474

Another hole to cover is related to all acquisition bringing prejudice to national security, in this case the Government can use special powers to block the threat:

- the right to exercise a veto over the latter resolutions, with the understanding that this particular power may only be used to safeguard the core interests of national security and defense by imposing particular prescriptions or requirements, rather than by exercising a veto over the transaction;

- the authority to enforce particular requirements with regard to information security, supply chain security, technology transfers and exportation control in the event of large acquisitions pursuant Article 1 of the Law Decree. The article 1-bis is considering also with the amendments the 5G technologies[31]. In particular it analyze Broadband electronic communications services based on 5G technology, which are considered activities of strategic importance for the national defense and security system for the purposes of exercising the extraordinary powers mentioned in this article. The National Cybersecurity Agency was consulted, along with the Ministers of Economic Development, Interior, Defense, Foreign Affairs and International Cooperation, Technological Innovation and Digital Transition, and other relevant Ministers, for the same purposes as mentioned in this article. Additional services, goods, relationships, activities, and technologies related to cyber security, including those related to cloud technology, may be identified with one or more decrees of the President of the Council of Ministers;

- the authority to forbid large transactions made by investors different from the Italian State, public entities, or those State-controlled, should the buyer eventually acquire (even directly than indirectly) a shareholding fixed with voting rights in the company's share capital that could jeopardize the interests of the most

[31] See more on article 1-bis of Law Decree about 5G in national security on Normativa, Presidenza del Consiglio dei Ministri official website, available at: https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2012-03-15;21~art1bis#:~:text=1.,larga%20basati%20sulla%20tecnologia%205G.

important sector of our country. In this way, it can be take into account also the article 122[32] of the Italian Security Act and the article 2341-bis[33] of the Italian Civil Code which are related to participations held by third entities and entering

[32] More details on article 122 TUF on "patti parasociali" in joint stock companies: "The following agreements, in whatever format specified, aim to allow shareholders of listed businesses to exercise their right to vote in the companies that control them; must be: a) submitted to CONSOB within five days of the agreement; b) announced in excerpt form in the daily newspaper within ten days of the agreement; and c) submitted to the company register of the location of the firm's registered office within fifteen days of the agreement.". See more on Gazzetta Ufficiale della Repubblica Italiana official website, available at: https://www.gazzettaufficiale.it/atto/serie_generale/caricaArticolo?art.versione=1&art.idGruppo=69&art.flagTipoArticolo=0&art.codiceRedazionale=098G0073&art.idArticolo=122&art.idSottoArticolo=1&art.idSottoArticolo1=10&art.dataPubblicazioneGazzetta=1998-03-26&art.progressivo=0

[33] More details on article 2341-bis of Italian Civil Code on "patti parasociali" in joint stock companies: "The agreements, in any format, that aim to stabilize the company's ownership structure or governance are as follows: a) they place restrictions on the transfer of relevant shares or assets holdings in companies that control them; b) they exercise the right to vote in joint stock companies or companies that control them; c) they have as their object or effect the joint exercise of a dominant influence on such societies. The agreements cannot last longer than five years and are meant to be stipulated for this duration even if the parties have anticipated a longer deadline; the agreements are renewable upon their expiration. In the event that a period is not specified in the agreement, each contractor may withdraw with one hundred and eighty days. Article provisions do not apply to agreements pertaining to wholly owned companies by participants in collaboration agreements that are instrumental in the production or exchange of goods or services." See more on Gazzetta Ufficiale della Repubblica Italiana official website, available at: https://www.gazzettaufficiale.it/atto/serie_generale/caricaArticolo?art.versione=1&art.idGruppo=298&art.flagTipoArticolo=2&art.codiceRedazionale=042U0262&art.idArticolo=2341&art.idSottoArticolo=2&art.idSottoArticolo1=10&art.dataPubblicazioneGazzetta=1942-04-04&art.progressivo=0

in shareholders' agreements provided by the latter ISA article (Italian TUF – Testo unico delle disposizioni in materia di intermediazione finanziaria) .

Pursuant the article 1 of the Law Decree and the Presidential Decree n. 35 dated 19 February 2014[34] the foreign investor have the mandatory duty to submit a notification in case of the latter resolutions to allow the Italian Government in exercising the special powers for the companies deemed as strategic. If any major acquisition is carried out in accordance with Article 1 of the Law Decree, the buyer must notify the Council of Ministers Presidency of the transaction's details in full within 10 days of the acquisition's completion (refer to Article 1, par. 5 of the Law Decree). It is important that all pertinent information, including a synopsis of the acquisition proposal, the buyer panel and its primary/core business, must be included in the notification[35].

The Italian Government will notify the relevant parties of the decision regarding the use of extraordinary powers within 45 days following the notification specified above. If the Government requests more information about the relevant transaction from the notifier or other parties, this period may be suspended at any time. In that instance, the requested information must be delivered within 30 days after the request. There can only be one suspension of the 45-day term, and subsequent requests won't affect it. Any major resolution or acquisition may be carried out after the period has passed, even if the Government has not given its approval.

The following procedures, pertaining to the shares representing any significant acquisition, have to be applied as:

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[34] More details on Presidential Decree n. 35 dated 19 February 2014 about: "As per the legislative decree of March 15, 2012, n. 21, there is a regulation that identifies the procedures for the activation of extraordinary powers in the defense and national security sectors", on Normativa, Presidenza del Consiglio dei Ministri official website available at: https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.del.presidente.della.repubblica:2014-02-19;35!vig=

[35] Sacco Ginevri, Commentaries and Cases on Italian Business Law (second edition), chapter 23 on foreign direct investments by Lorenzo Locci, page 267/268 (July 2021)

i. is the effectiveness of any significant resolution, pending the notification process and, in any event, the expiration of the aforementioned terms;

ii. Additionally, the voting rights and other administrative rights pertaining to the shares representing any significant acquisition are suspended.

According to Article 1, the Law Decree establishes some sanctions that apply, accordingly, to pertinent resolutions and acquisitions. These penalties are as follows:

- All resolution adopted or executed in contravention of the provisions set forth in Article 1 renders it null and void. The Government may, in addition, call upon the company and relevant counterparties to reinstate the prior situation at their own expense (Article 1, paragraph 4, Law Decree).

- Except the violation constitutes an illegal act, as failure to adhere to the stipulations detailed in Article 1, paragraph 4 of the Law Decree, which include violating specific conditions and prescriptions mandated by the Government, leads to the imposition of a monetary administrative penalty. This penalty may reach twice the value of the transaction but is, in any event, not less than 1% of the aggregate turnover reported in the most recent approved financial statements of the concerned companies (Article 1, paragraph 4, Law Decree identifies administrative fine equal to twice the transaction value, which is, in any case).

- In particular, with regard to major acquisitions, the buyer who disobeys the gove rnment's conditions faces a financial , not less than 1% of the turnover achieved in the most recent fiscal year for which the buyer's financial statements have been approved (see Article 1, paragraph 5, of the Law Decree);

- Anyone who disregards the notice requirements outlined in full in Article 1 of the Law Decree, with respect to both substantial resolutions and/or acquisitions, will be in breach of the law, unless the violation suggests a criminal offense and will not affect any legal invalidities;

- According to Article 1, paragraph 8-bis of the Law Decree, is subject to a pecuniary administrative fine of up to twice the transaction value and, in any case, not less than 1% of the cumulative turnover realized by the involved companies as a result of their most recent approved financial statements.

It is possible to make a similar, but not coincident discourse about sectors concerning energy, transportation and communication industries. This issue is triggered by article 2 of the Law Decree and through the Decree of the President of the Council of Ministers n. 23 dated December 2020, n. 180[36] that provides indications and specifies particular events in which it is possible to carry out special powers, about firms that are owning assets in these strategic industries.

So there are three principal events which could trigger the exercise of the special powers of the Government to assure the national security:

- All critical decisions impacting on ownership, control, or the utilization of significant assets, as outlined in Article 2 of the Law Decree. The latter emphasizes that any resolutions or actions taken by companies must be carefully scrutinized, especially when they perform the potential loss, transfer, or alteration of these assets' status or purpose. The mention of various corporate maneuvers such as mergers, de-mergers, changes in registered office, and amendments to by-

[36] More details about article 2 of the Law Decree and about the Decree of the President of the Council of Ministers n. 23 dated December 2020, n. 180: “The special powers outlined in the article 2 of Law-Decree dated March 15, 2012 focus on identifying strategic assets in the national energy system. These include gas and electricity transmission networks, LNG import infrastructure, and associated control facilities. The aim is to regulate and safeguard critical energy assets within the country. The networks, facilities, including those necessary to ensure minimum supply and the operation of essential public services, as well as assets and relationships of strategic relevance to national interest in energy, transportation, and communication sectors, are identified. Additionally, the types of acts or operations within the same group to which the regulations of this article do not apply are specified.” See more Details on Gazzetta Ufficiale della Repubblica Italiana official website, available at: https://www.gazzettaufficiale.it/eli/id/2020/12/30/20G00200/sg

laws highlights the diverse ways in which asset ownership and control can be affected. Overall, it is worth to note the need for diligent monitoring and regulatory frameworks to ensure accountability and safeguard against adverse consequences resulting from such corporate decisions;

- Purchases of controlling stakes in businesses holding substantial assets by non-EU entities. It emphasizes the necessity of doing a two-pronged evaluation: first, based on the stability and legality of the buyer's control over the business as defined by the Securities Act and the Italian Civil Code, and second, on the possibility of a threat or prejudice to the State's vital interests. The Italian Securities Act and Article 2359 of the Italian Civil Code[37] highlights the legislative frameworks controlling corporate governance and investing operations in Italy. This implies that in order to maintain accountability and transparency in corporate governance, the takeover of control must abide by the rules set forth by the law and regulations. A "threat of serious prejudice" to the State's core interests is mentioned, indicating the seriousness of the possible outcomes from such acquisitions. Numerous issues could be covered by this, such as critical industries,

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[37]More details on article 2359 of the Italian Civil Code: "Considered controlled companies are:

- Companies where another company holds the majority of votes exercisable in the ordinary assembly;
- Companies where another company holds enough votes to exert dominant influence in the ordinary assembly;
- Companies that are under dominant influence of another company due to specific contractual constraints with it.

For the purposes of applying points 1) and 2) of the first paragraph, votes belonging to controlled companies, trustee companies, and intermediaries are also counted; votes on behalf of third parties are not counted. Considered affiliated are companies over which another company exercises significant influence. Influence is presumed when at least one-fifth of the votes can be exercised in the ordinary assembly or one-tenth if the company has publicly traded shares.". See more on Camera dei Deputati document available at:
https://www.camera.it/temiap/2016/12/12/OCD177-2585.pdf

economic stability, and national security. All things considered, it emphasizes the necessity of strong regulatory frameworks to protect against any menace with the aim of preserving the integrity of national interests in the setting of international trade.

The Italian Government can exercise certain special powers, which are only used in accordance with objective and non-discriminatory standards. It takes into account the specifics of the relevant operation, in light with the defined parameters of relevant transactions as stated in Article 2 of the Law Decree:

- The triggering of a veto power demonstrates the regulatory bodies' proactive approach to safeguarding the public interest, especially when it comes to the continuity and safety of vital networks and supplies. The decree recognizes the possibility of unusual circumstances that may not be sufficiently addressed by current national or European rules by granting such authority. The necessity of using the veto only in cases where the public interest is clearly in jeopardy emphasizes how serious the decision-making process is. This makes sure that government action is limited to situations in which there is an urgent and severe risk to public safety or supply continuity.

- The Article 2, paragraph 6 of the Law Decree underscores the Italian government's commitment for the empowering regulatory authorities to condition the effectiveness of significant acquisitions. The power to impose requirements and duties on buyers is indicative of a proactive strategy meant to lessen possible risks to the interests of the general public. This entails taking care of issues with network and installation security, operational integrity, and safety. Furthermore, the clause highlights the significance of upholding public safety and order while underlining the wider societal ramifications of specific acquisitions. The latter fact is aimed of allowing the government the power to forbid acquisitions in such instances, underscoring the importance with which potential threats to public interests are addressed.

The requirement for interested companies and purchasers to submit notifications as outlined in Article 2 of the Law Decree, in conjunction with Presidential Decree No. 86 of 25 March 2014, underscores the regulatory framework's commitment to transparency and accountability, by mandating the submission of notifications for significant transactions and acquisitions. So, the decree is aimed to enhancing regulatory oversight and ensure that relevant authorities are informed of potentially impactful business activities.

This dual assessment emphasizes the need of adhering to regulatory standards while also streamlining the notification process. It facilitates the exchange of crucial data and insights about prospective transactions and acquisitions by acting as a channel for open communication between companies and regulatory agencies. In this sense, the accessibility, transparency, and responsiveness of the process to the requirements of all parties involved must be guaranteed by the regulatory bodies. Furthermore, in order to resolve any issues or doubts that can surface throughout the notification process, review and feedback procedures should be set up.

So, Presidential Decree No. 86 of March 25, 2014[38], and the notification requirements outlined in Article 2 of the Law Decree are representing essential tools for encouraging regulatory compliance and openness in major mergers and acquisition operations. In order to promote open communication and efficient oversight, the regulatory framework requires interested companies and purchasers to notify the relevant authorities of any potentially impactful acts. In the end, supporting the stability and integrity of economic

[38] More details on Presidential Decree No. 86 of March 25, 2014: "This regulation establishes the implementation framework for the exercise of the State's special powers concerning strategic assets in the energy, transportation, and communications sectors, as identified under Article 2, paragraph 1, of Decree-Law No. 21 of 15 March 2012, converted, with amendments, by Law No. 56 of 11 May 2012, hereinafter referred to as the "Decree-Law". It also pertains to the definition of organizational procedures for carrying out preparatory activities related to the exercise of special powers, as per Article 2, paragraph 9, of the Decree-Law.". See more on Gazzetta Ufficiale della Repubblica Italiana official website, available at: https://www.gazzettaufficiale.it/eli/id/2014/06/06/14G00098/sg

operations, this coordinated effort helps to maintain a fair and accountable corporate climate.

In conclusion, the framework concerning Foreign Direct Investment in Italy reflects a complex interplay of economic, political, and regulatory factors. Italy's attractiveness as an investment destination stems from its rich cultural heritage, diversified industrial base, and strategic geographic location within the European Union. However, to fully leverage the potential benefits of FDI, Italy must continue to strengthen its regulatory environment, enhance infrastructure, and foster an ecosystem conducive to these kind of investments. Moreover, taking proactive measures to address bureaucratic barriers, promoting innovation, and strengthening investor confidence can further increase Italy's position as an attractive destination for abroad capital.

In the next paragraph, I will delve into the specific impact of FDI on the Italian economy, exploring its implications for economic growth, industrial development, employment generation, and overall macroeconomic stability.

2.3 Italy's importance as a FDI destination

Italy is considered by international investors as a key location for foreign direct investment. There are many sectors in which our Country can be considered as first mover or leader of the global industry. This phenomenon is evincible by the analysis of a number of reasons and factors:

i. As analyzed before, the main factor is related to the Italian large and diverse economy: it is worth to note how Italy is one of the greatest economies in the world and for this reason it appeals to international investors. With a broad industrial foundation that encompasses industries including food, fashion, equipment, automotive, and design, it offers a variety of investment prospects and opportunities. It's not just clothing, food, and furniture that are made in Italy, but the industrial sector, which includes high-tech, machinery, and pharmaceuticals, has experienced a significant transition. In fact, “Made in Italy” businesses have prospered recently as they have transformed into high added-value segments, such as furniture and textiles, while specialized industries like high technology, mechanical machinery, and pharmaceuticals have risen into significant State industries. Following Germany, our Country has the second position in the

European manufacturing trade balance of one thousand industrial regions. Eight of these high-tech industrial regions are actually Italian when you take the first twenty into account.

ii. Another important thing to take into account is the strategic location: our peninsula is ideally situated to access both European and Mediterranean markets due to its location in Southern Europe. Businesses may readily access and serve a sizable consumer base thanks to its close proximity to important European markets including Germany, French, Spain, Switzerland, Croatia, Greece. It is also important to understand that there are also many Non-European country nearby as Morocco, Algeria, Tunisia, Libya and Egypt. There is a high level of market openness to other countries because of the numerous maritime, airport, and logistic nodes as well as the numerous air and marine origin-destination international links.

iii. The third factor is about the labor market characterized by a skilled workforce: the latter in Italy is highly educated and talented, especially in fields like technology, engineering, and design. For this reason, that is also relate with the first, it is a desirable location for businesses that need highly skilled workers, to commit to implementing advanced training systems to improve workers' skills and internalize them through profits and maximum quality. Italy's famous excellence and quality of goods have allowed it to maintain its position in the World's Top 10 Manufacturers for over 30 years, despite the entry of new competitive companies from emerging countries. In the industrial sector, 18.2% of workers are engaged in technology-intensive operations, ranking second only against Germany skilled employees with 19.1%.

iv. In the last years Italy is also working hard to increase capabilities in innovation and technology industry, emphasizing these two areas heavily. The nation's emphasis on research and development benefits sectors including fashion, automobiles, and machinery is offering chances for international businesses to work together and invest in cutting-edge innovations. Our nation is ranked 11th in the world with 8,307 filed patents, and fourth in Europe behind the UK, France, and Germany;

v. Tourism and Cultural Heritage: With millions of tourists visiting each year (39 million in 2024), Italy is a popular travel destination and it is positioned at sixth place in international tourism ranking. The nation's historical landmarks, beautiful scenery, and rich cultural legacy all support the expansion of the tourism sector. Real estate, hospitality, and allied industries may appeal to foreign investors (tourism in the peninsula is representing more than 3,7% of Italian GDP[39]).

vi. Sixth, a lot of attention was given to the development of Italian infrastructures: Italy has been making investments to upgrade its networks for logistics and transportation. It is simple for companies to run effectively and transport items and products across the nation and abroad thanks to these advancements. Along its 8,122 km of coastline (maritime infrastructure), Italy keeps more than 40 important trade ports, 21 of which provide international line services (14 of which are a component of the European Strategic Network). The Peninsula is thus equipped to provide transshipment services for global container traffic in addition to gateway services for the Mediterranean Sea commercial flows. In terms of roll-on/roll-off traffic, Italy leads all other European nations in both the quantity of ships (2,700) and the number of ship owners (157). Italy has joined other European nations in advancing more transparency and digital government services, investing €4.5 billion between 2014 and 2020 to advance digital infrastructure, digital services, and citizen digital education. An example of the latter trend is represented by Milan, which is one among the most technologically

[39] See more in article "Most Visited Countries 2024", on World Population Review official website (2024), available at: https://worldpopulationreview.com/country-rankings/most-visited-countries

advanced cities in Europe. At the end it is important to give some information about public utilities infrastructures. In the Italian energy market, production, trading, and retail operations are completely liberalized, but transmission and distribution services are governed by concession agreements. Inside the Eurozone, Italy is one of the main producers of electricity, with 87% of satisfaction of the current national production , covering a range of more than 37 million consumers;

vii. Italy is among the major electrical producers in the Euro Area, surpassed only by Germany and France.

viii. High standards of living are available in Italy, where there is a strong focus on culture, food, and a pleasant climate. Companies may find it easier to draw in and keep talent if this feature appeals to overseas leaders and professionals. In fact it is also important to mention that the Government is making incentives to help foreign investors in buying the so-called "Second Home", not only with the aim of living, but also for holidays and relaxing. The latter choice is also important to improve the quality of the Real Estate market in the peninsula, increasing price of house not only in metropolis as Rome and Milan, but also in countries with a lower density of population but with potential natural beauty as seaside, mountain or also monuments.

ix. As I have anticipated another important factor is related to Government incentives: to entice foreign investment, the Italian Government offers a range of support initiatives and incentives. These could consist of subsidies as: tax credits on assets (The Industry 4.0 National Plan[40] offers tax credits to businesses of all

[40] More details on Industry 4.0 National Plan on document made by Ministero delle imprese e del made in Italy, available at: https://www.mimit.gov.it/images/stories/documenti/INDUSTRIA-40-NATIONAL%20PLAN_EN-def.pdf

sizes that invest in new physical and intangible capital goods, with the maximum tax credit amount being 20%, contingent upon the total investment size), Employment Bonuses (employers who hire certain groups of workers will benefit from a labor cost reduction. This includes women without jobs of any age and those under age 36, who will receive a 100% reduction in labor costs. Additionally, all new and current employees in Southern Italy will receive a 30% reduction in labor costs), Patent Box (it consist in a voluntary fiscal regime which enables businesses to deduct an additional 110% of their qualified research and development – R&D[41] - expenses from their tax base, on top of the standard 100% deduction, for a total deduction of 210%[42]), fiscal benefits concerning inpatriate workers (for a maximum of five years or ten years if one acquires residential property and has dependent children it is possible to receive a reduction of 70% or 90% of their taxable income if they live in Southern regions as Abruzzo, Apulia, Basilicata, Calabria, Campania, Molise, Sardinia, and Sicily), incentives for investments in disruptive sectors for legal persons (a thirty percent tax reduction on the IRES, that is corporate income tax, is available to legal persons that invest in creative startups and SMEs. The investment needs to be held for a minimum of three years), the latter is provided also for natural persons (an investor's taxable income for IRPEF, which is personal income tax, is reduced by 50% for natural persons who invest in innovative startups and SMEs. At least three years must

[41] More details on research and development in ICE document on FDI, page 22 (2018): "With R&D investments above €20 billion, Italy ranks fourth in Europe and 10th in the OECD, which are among the greatest in the world when expressed in absolute terms.". See more on ICE official website available at: https://www.ice.it/en/sites/default/files/inline-files/invest_in_italy_english.pdf

[42] More details on Patent Box deductions on R%D: "Research and development costs that are directed toward the creation of qualifying intangible assets—software covered by copyright, industrial patents, designs, and models—are eligible". See more on Ministry of Foreign Affairs and International Cooperation, Italian Trade Agency and Investment Agency official website available at: https://www.ice.it/en/invest/investment-incentives

pass after the investment is made), and other programs designed to promote job creation and economic growth[43].

x. Finally, but not less important it is worth to analyze the market access factor. As a member of the European Union, Italy offers businesses access to a sizable and well-integrated market. As a member of the EU, companies can also take advantage of trade agreements and rules that make cross-border operations inside the union easier. In fact Italy can access over 30 national markets in the European Economic Area duty-free, as well as over 500 million customers.

Thanks to the latter observations, Italy saw a 50% increase in foreign direct investment in 2016, totaling $29 billion. It also moved up five spots in the global rankings to take the 13th spot (about €922 million, the 2/3 of the cash raised from the market came from international investors, whereas the remaining portion came from domestic contributions)[44].

A high-level interministerial committee headed by the Ministry of Economic Development and overseen by the Prime Minister's office was established to support the governance and attraction of foreign direct investment. The committee's duties include defining foreign investment strategies, proposing pro-business reforms, and providing support for specific important projects. Furthermore, A one-stop shop for foreign investors handles the entire investment cycle, including gathering investor inquiries, preparing tenders, overseeing aftercare for incentives, contacts with Administrations (through an agreement between the Italian Trade Agency and Invitalia), collaborating with local FDI agencies.

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[43] See more on Italian incentives for FDI investors on Ministry of Foreign Affairs and International Cooperation, Italian Trade Agency official website, available at: https://www.ice.it/en/invest/investment-incentives

[44] More details on this data on Ministry of Foreign Affairs and International Cooperation, Italian Trade Agency and Investment Agency official website, available at: https://www.ice.it/en/sites/default/files/inline-files/invest_in_italy_english.pdf

2.4 Impact of FDI on Italian economy

Understanding how foreign direct investment affects Italy's GDP is becoming increasingly important for politicians, economists, and investors as the country continues to navigate the challenges of the global economy.

The Foreign Direct Investment net inflows as a percentage of GDP in Italy from 1970 to 2022 exhibit a fluctuating yet generally positive trend. Despite occasional dips and spikes, the overall trajectory suggests a growing interest and confidence from foreign investors in Italy's economy over the years.

From a starting point of 0.55% in 1970, the share of GDP that came from net foreign direct investment inflows fluctuated over time, occasionally falling below 0.1%. The notable increase that has been noted during the early 2000s, when FDI inflows increased and peaked in 2011 at approximately 2.98% of GDP, is especially remarkable.

These variations may be the result of modifications to the state of the world economy, adjustments to governmental regulations, and variations in investor mood. The 2009 negative outlier (-0.39%) is probably a reflection of the global financial crisis-era economic slump that affected foreign direct investment flows globally[45].

Despite the global economic difficulties caused by the COVID-19 pandemic recovery and other geopolitical issues, Italy's net inflows of Foreign Direct Investment in 2022 remained indicative of the country's appeal to foreign investors (1,52% of GDP). As one of the biggest economies in the world and a part of the EU, Italy probably never stopped attracting foreign investors looking for possibilities in a variety of industries, including technology, manufacturing, tourism, and finance. Despite obstacles like bureaucratic roadblocks and fundamental economic concerns, Italy's well-known industries, rich

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[45] All data on Foreign Direct Investment net inflows as a percentage of GDP in Italy are available on World Bank official website at: https://data.worldbank.org/indicator/BX.KLT.DINV.WD.GD.ZS

cultural legacy, and advantageous location make it a desirable location for international investment.

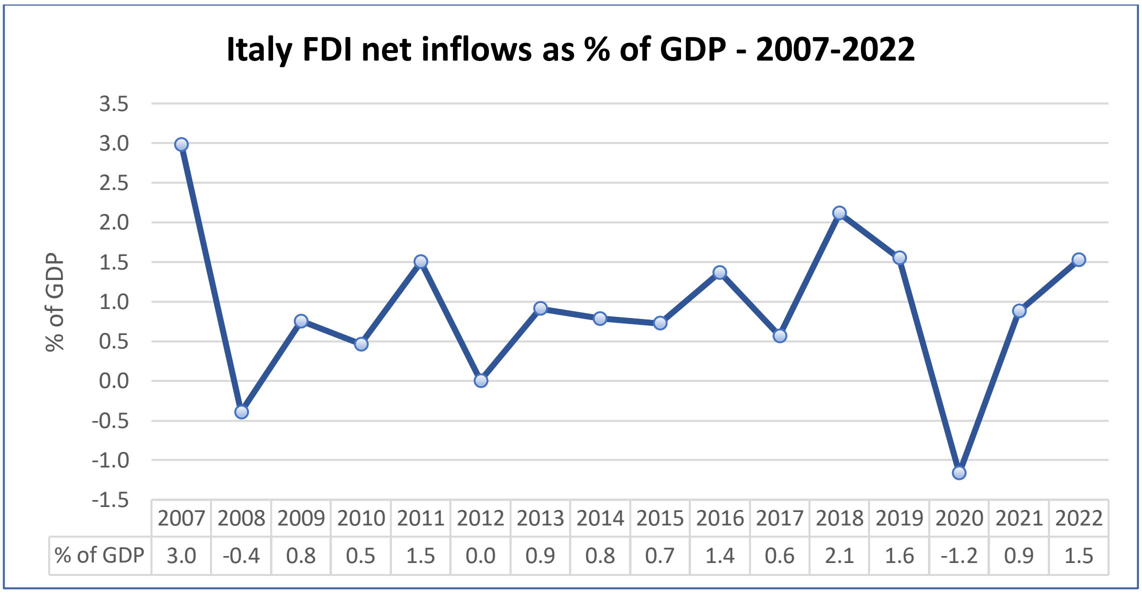


Figure 1 - Italy FDI net inflows as % of GDP (2007-2022)- Data from World Bank website[46]

It is also important to make a comprehensive analysis of Italy's engagement with the global economy through foreign direct investment inverse trend. So, the remaining amount of foreign investment leaving Italy after taking into account incoming investment is known as "net outflows".

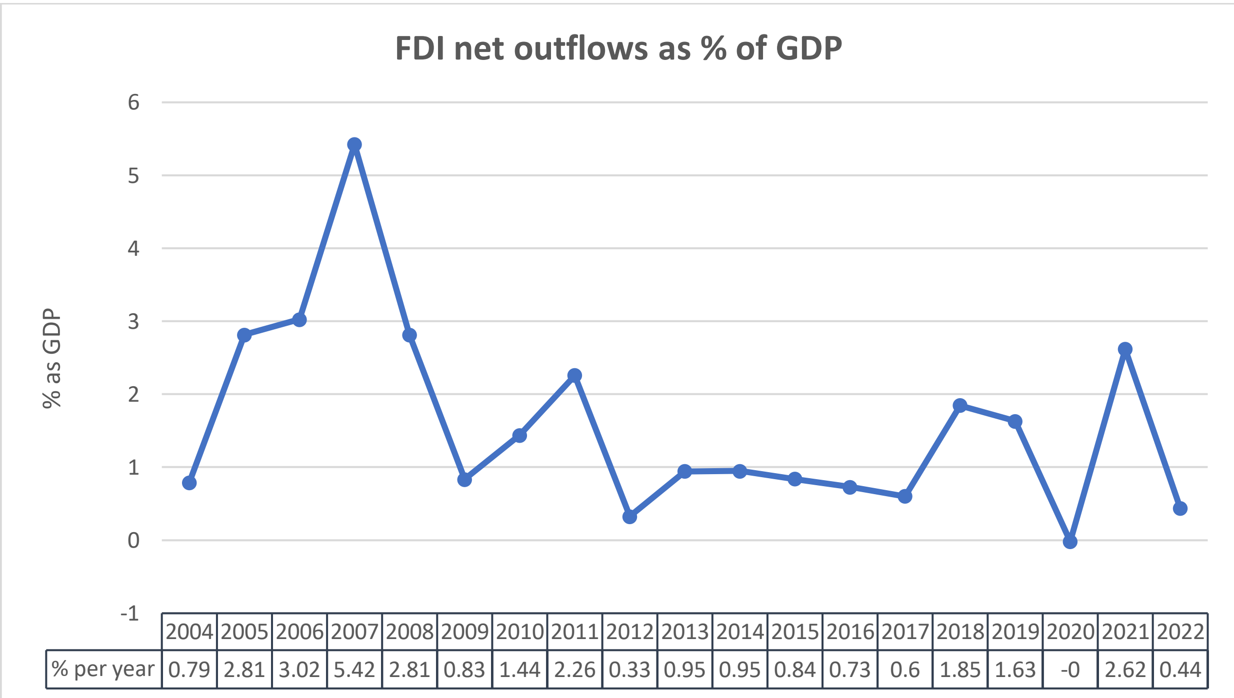
It's clear that Italy's FDI environment has changed significantly in the last 20 years, from the early negative values, showing net inflows, to the significant positive values in recent years.

Considering the latter trend, the data shows significant variability over time, with levels ranging from negative to peaks over 5.0 (this variability suggests fluctuations in Italy's outbound investment activity, in particular between 2005 and 2007). These high ratios

[46] More details on data used for Figure 1 graph on World Bank Excel document, available at: https://data.worldbank.org/indicator/BX.KLT.DINV.WD.GD.ZS

may have resulted from large-scale acquisitions, international ventures, or expansions by Italian businesses looking to expand internationally observing potential growth opportunities.

On the contrary, negative values, such as the -0.016 recorded in a single year (2020), was reflecting periods in which Italy saw net foreign investment inflows, suggesting either a possible reversal of capital flows or increased appeal of the Italian market to foreign investors during those times.



	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
% per year	0.79	2.81	3.02	5.42	2.81	0.83	1.44	2.26	0.33	0.95	0.95	0.84	0.73	0.6	1.85	1.63	-0	2.62	0.44

Figure 2 - Italy FDI net outflows as % of GDP (2007-2022)- Data from World Bank website[47]

After declining between 2006 and 2011, foreign direct investment flows increased in Italy between 2012 and 2018, with a subsequent decline in the next two years. In any event, as

[47] More details on data used for Figure 2 graph on World Bank Excel document, available at: https://data.worldbank.org/indicator/BM.KLT.DINV.WD.GD.ZS?locations=IT

compared to the other major European economies, our country values are on average very small: 21 billion USD against 526 billion USD of the European average.

With the exception of 2018, FDI net inflows have been trending quite static (in a stagnant sense), however, inventories of incoming FDI continue to expand relative to his GDP, following the trends of the major European economies (Italy is positioning in last place between the five major EU economies). UK keeps the best result as % of GDP with a maximum of 7,2 in 2019, followed by Spain with a peak of 5,2 in 2020, France with 3,2 in 2020 and Germany with 2,4 in 2020[48].

As expected, the stocks of inbound foreign direct investment have increased steadily over the past 20 years, rising from 237 USD/billion in 2005 to 486 USD/billion in 2020. Despite the latter phenomenon, Italy continues to be the nation with the lowest stock of foreign direct investment also in 2020 among the major European economies, despite increase both in absolute terms and as a percentage of GDP.

We can thus state that In terms of attractiveness overall, Italy ranks at 9th place compared to G20 countries. As a result, even though Italy is the least country between Europe major economies in this field, it is positioned more favorably at a global level than certain other major economies, including China and Russia (these countries are facing a few recognized issues with FDI).

So, the most influential elements on development plans in Italy are management ability, specialized talents and employees, control over the domestic market, and safety. The elements that have the least influence on the latter trend in our country are infrastructure, taxation, fiscal incentives, and regulations. It is also worth to note that in Italy tax revenue in relation to GDP is stably above 40%. (among the main European economies, only France has higher values).

Another important issue is about the black market and illicit economy, that contribute steadily to over 11% of GDP. Even if Italy's score and rating are rising, the country is

[48] Data on FDI stock inflows pf European Union countries available on Deloitte database available at: https://www2.deloitte.com/content/dam/Deloitte/it/Documents/about-deloitte/AttrattivitaDelSistemaItalia_Deloitte.pdf

ranked lowest among the major European economies according to the Corruption Perception Index. Our country is ranked 31 out of 45 countries in Europe on the Political Stability Index, which gauges a nation's level of political stability.

To face the exposed weaknesses the Government proposed measures through the "PNRR " plan with the aim of strengthening our nation's structural vulnerabilities in order to boost Italy's economic potential for growth. The goals established by the PNRR need to aid in enhancing strengths and overcoming deficiencies. Further resources will be provided from the Complementary National Plan ("PNC", €30.6 billion) in addition to the allocation specified by the PNRR (approximately €191.5 billion between loans and grants). This will bring the total amount to approximately €222 billion, to which the resources from the React EU plan (13 billion euros) are added. A total of €235 billion in exceptional resources will be made accessible[49].

The distribution of these resources is in line with the requirement aimed at closing the infrastructure gap and advance the ecological and digital transformation. So, implementing the PNRR in a timely and efficient manner gives a vital chance to increase Italy's appeal to foreign enterprises and, consequently, to strengthen our production system.

2.5 Italian approach versus other countries methodology to FDI.

In this paragraph, it shall conduct a thorough examination of Foreign Direct Investment trends, paying special attention to Italy's differences in relation to other nations. By concentrating on the frameworks of other countries, we aim to contextualize Italy's FDI patterns within a broader international perspective, discerning how regulatory environments, economic incentives, and geopolitical considerations differ across various nations. Understanding the comparative frameworks allows us to better comprehend Italy's special situation and potential possible areas for economic change and policy improvement.

[49] More details on PNRR resources on Deloitte database, available at: https://www2.deloitte.com/content/dam/Deloitte/it/Documents/about-deloitte/AttrattivitaDelSistemaItalia_Deloitte.pdf

2.5.1 Spain

The legal framework around foreign direct investment outlines rules that apply to investments in which the investor acquires a stake of at least 10% of the capital of certain Spanish companies[50]. These legal requirements also apply to investments made by entities that fall into the following categories:

- Residents who are not citizens of member states of the European Union (EU) or the European Free Trade Area (EFTA);

- Residents of the EU/EFTA whose non-EU/EFTA residents are the beneficial owners. When the latter eventually control, directly or indirectly, more than 25% of the investor's stock or voting rights, it is considered that beneficial ownership has materialized. The assessment of beneficial ownership also takes into account situations in which individuals who are not citizens of the EU or EFTA exert control over the investor through other means, either directly or indirectly.

It is also important to note that, up to June 30, 2021, the 25% requirement applies to all investors who do not have Spanish residency status, which includes EU/EFTA residents.

When the target is active in one of the relevant areas or the thresholds are reached, as provided by Law 19/2003, of July 4 (concerning the legal framework governing the flow of money and business dealings on the global market and with specific measures pertaining to and in compliance with article 7-bis[51]) notification is required and mandatory following subsequent criteria:

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[50] More details on Spain FDI framework on EY guide, available in the document at: file:///C:/Users/franc/Downloads/ey-global-foreign-direct-investment-screening-guide-may%20(2).pdf

[51] More details on Law 19/2003, Of July 4, On legal regime of movements of capital and economic transactions abroad and on certain measures for prevention of money laundering and on article 7-bis on Global Regulation official website, available at: https://www.global-regulation.com/translation/spain/1450080/law-19-2003%252c-of-july-4%252c-on-legal-regime-of-movements-of-capital-and-economic-transactions-abroad-and-on-certain-measures-for-prevention-of-money-l.html#:~:text=the%20outside%20world.-,1.,the%20prevention%20of%20money%20laundering.

• The foreign investor is under the direct or indirect authority of a third country's government, which includes public entities or the armed services;

• If there is a substantial risk that the foreign investor engages in criminal or illegal activity that affects public security, public order, or public health in Spain;

• If the foreign investor has made investments or engaged in activities in sectors affecting security (Royal Decree 664/1999, dated 23 April, on foreign investments regarding National Defense[52]), public order, and public health in another EU Member State

The consequences of investment operations conducted without the requisite prior authorization is that the latter are considered null and void, lacking any legal validity until formal legalization is attained. It is a serious infraction that calls for enforcement action to carry out these actions without the required authorization, either prior to its acquisition or in contravention of set restrictions. As in Italy, Authorities have the power to not only declare the transaction void, but also to fine or censure parties, either in public or in private.

It is worth to note that, although the legislation anticipates a six-month process, custom dictates that the appropriate authorities will often make their decision two months after the transaction is formally submitted (the procedure adopted in the field of Covid-19 was provided by The Transitional Provision of Royal Decree-Law dated 34/2020[53], which was in force until 30 June 2021).

[52] More details on Royal Decree 664/1999, dated 23 April, on foreign investments regarding National Defense on Agencia Estatal Boletín Oficial del Estado (Gazzetta Ufficiale Spagnola), available at: https://www.boe.es/buscar/act.php?id=BOE-A-1999-9938

[53] More details on The Transitional Provision of Royal Decree-Law dated 34/2020 on Agencia Estatal Boletín Oficial del Estado (Gazzetta Ufficiale Spagnola), available at https://www.boe.es/buscar/act.php?id=BOE-A-2020-14368

Anyway, prospective investors should be aware that, depending on the transaction, they may be able to ask the relevant government ministry through a formal petition whether or not the transaction needs to be reported and notify.

2.5.2 Switzerland

Another curious phenomenon to analyze is the one of Switzerland. In this country does not exist a universal threshold. Nevertheless, each sector may have its own set of thresholds (Swiss does not yet have extensive FDI regulations)[54].

Certain industries, most notably banking and real estate (Lex Koller), have implemented regulations restricting and governing foreign investment. Furthermore, for industries where state ownership is predominant, a de facto restriction on foreign investment must be considered. However, in the spring of 2020, a parliamentary motion was approved, assigning the Federal Council the duty of working for two years to prepare and present a bill to the Parliament regarding foreign direct investment in Swiss enterprises.

So it is easy to understand that also the rules regarding the mandatory notification are different sector to sector. For instance:

• According to Article 26 of the Federal Law on Acquisition of Real Estate by Foreign Persons, the authorization has a suspensive effect in the real estate industry;

• In the banking industry, a bank must receive the necessary authorization before it can begin operations and register with the commercial registration (Article 3 Federal Banking Act[55]).

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[54] More details on Switzerland FDI framework on EY guide, available in the document at: file:///C:/Users/franc/Downloads/ey-global-foreign-direct-investment-screening-guide-may%20(2).pdf

[55] See more about the Swiss Federal act on Banks and Savings Banks on KPMG document (article 3, page 5) available at: https://assets.kpmg.com/content/dam/kpmg/ch/pdf/ch-banking-act-en.pdf

In general, there is no legal waiting period. The length of the procedure may change based on the geography, industry, and case complexity. For instance, six months should normally be taken into consideration in the banking industry.

Switzerland has not implemented any type of Golden Power even during the Covid-19 pandemic, but the Government provided rules about specific sectors as:

- Federal Law on Acquisition of Real Estate by Foreign Persons, also called "Lex Koller";
- Federal Banking Act;
- Federal Act on Telecommunications;
- Federal Act on Radio and Television;
- Federal Nuclear Energy Act;
- Federal Aviation Act.

Under foreign law, reciprocity of treatment is necessary in these sectors. (With a few exceptions, also in the financial industry). It should be noted that even in industries without explicit FDI regulations, restrictions on foreign investment may nevertheless arise de facto due to state ownership in areas where it predominates, such as critical infrastructure.

2.5.3 UAE (United Arab Emirates)

In 2022, the United Arab Emirates (UAE) saw a peak of $23 billion in foreign direct investment, a remarkable 10% increase over the previous year[56]. This increase in FDI highlights the UAE's appeal as a location for investments. The nation has been a top destination for foreign investors due to its sophisticated and diverse economy and dedication to economic reforms. Abu Dhabi, Dubai, Sharjah, Ras Al Khaimah, Ajman, Fujairah, and Umm Al Quwain are the seven Emirates that make up the United Arab Emirates (UAE). Every one of the latter areas has taken action to improve the climate for

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[56] See more about this data on UAE attractiveness on Embassy of the UAE in Washington DC, available at: https://www.uae-embassy.org/fdi-and-business-environment#:~:text=Foreign%20direct%20investment%20(FDI)%20flows,as%20an%20attractive%20investment%20destination.

international investment. In an effort to attract international investment to the UAE mainland, the Government recently amended the Companies Law, as was previously announced. More foreign direct investment is encouraged under the government's "Vision 2021" strategy plan, particularly in important strategic industries like technology.

The main curious factor is that foreign investors may own 100% of a company's shares in the free zones established by the UAE. The main advantages of starting a business in these Areas (including Abu Dhabi and Dubai that for example, can allow foreigners to own real estate in specific freehold developments) include exemptions from corporate income tax, import and export customs duties

This country has become one of the Gulf Cooperation Council's (GCC) primary recipients of foreign direct investment (actually, it is responsible for over 60% of the GCC's total FDI inflows, which more than doubled to $37 billion over the same time period). This phenomenon is aimed at illustrating the motivation of Emirates attractiveness for outdoor investors.

As seen by its emphasis on industries like financial services, trade, and tourism, the UAE's continuous efforts to diversify its economy beyond petroleum earnings have paid off. The UAE has established an atmosphere that is favorable to both domestic and foreign investment by enacting changes that are business-friendly and social initiatives (for instance in the field of Hydrocarbon sector).

Anytime a direct change in ownership of a company based in the United Arab Emirates occurs, the company's constitutional documents must be revised to reflect the new ownership, and the approval of the appropriate licensing authorities is required before the change is recognized. Furthermore, in accordance with UAE Cabinet Resolution No. 58 of 2020[57], every UAE-based business that experiences a shift in ownership or control of

[57] More details on UBO and Cabinet Resolution n. 58 of 2020 DMCC database, available in the document concerning the whole regulation on: https://2509857.fs1.hubspotusercontent-na1.net/hubfs/2509857/C5-Migrated-Files/All-Files/Cabinet_Resolution_58-2020_Regulating_Beneficial_Owner_procedures2_pr2..__002.pdf

at least 25% of its issued share capital is required to maintain a record of such changes in ultimate beneficial ownership (UBO)[58].

Regarding restrictions on foreign ownership in the United Arab Emirates, companies incorporated in the country's mainland were required to designate a UAE national (or a company fully owned by a UAE national or nationals) to hold a minimum of 51% of the company's shares. This requirement was imposed by the former UAE Federal Law No. 2/2015 on Commercial Companies (Companies Law)[59] and its earlier versions, which date back to 1984. The UAE's Free Zones, which are distinct free economic zones inside each Emirate with their own laws governing company regulations and business licenses within that jurisdiction, were exempt from this restriction. Along with other significant changes, Article 1 of Federal Decree-Law No. 26/2020 (the CCL Amendment) eliminated the FDI prohibition included in Article 10 of the Companies Law.

The new Article 10 stipulates that Country citizens must have some ownership over select "Activities of Strategic Impact." In due course, the Cabinet is anticipated to pass a resolution outlining the contents of the Activities of Strategic Impact. Furthermore, the Economic Departments in each Emirate will have the authority to decide how many UAE nationals must be appointed to the board and what proportion of the company's shares must be owned by citizens.

Furthermore, a UAE-based company, regardless of whether it is based on the UAE mainland or in a Free Zone, must record any significant changes to its UBO (defined as

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[58] More details on UAE FDI framework on EY guide, available in the document at: file:///C:/Users/franc/Downloads/ey-global-foreign-direct-investment-screening-guide-may%20(2).pdf

[59] See more on UAE Federal Law No. 2/2015 on Commercial Companies (Companies Law) on document of Department of Dubai Economic Development, available at: https://ded.ae/ded_files/Files/%D8%A7%D9%84%D9%82%D9%88%D8%A7%D9%86%D9%8A%D9%86%20%D9%88%D8%A7%D9%84%D8%AA%D8%B4%D8%B1%D9%8A%D8%B9%D8%A7%D8%AA%20PDF/Federal_Law_No_(2)_of_2015_AD_On_Commercial_Companies.pdf

25 % or more of the issued share capital) in a register that the company maintains specifically for this purpose and makes available for inspection by the UAE licensing authorities.

The documents required by the licensing authority usually consist of:

- Board resolutions approving the share sale from the buyer and seller (assuming they are corporate entities and not individuals);

- Powers of attorney allowing individuals in the nation to effect the share transfer;

- The buyer's company constitutional documents and an amendment to the target company's official Memorandum of Association to reflect the change in its shareholding.

The authority can take some time for also monitoring all documents issued or signed outside of the United Arab Emirates (they must notarized by a notary public and then legally recognized by the UAE embassy in that nation). It can consequently take two to three months to complete the process in a free zone and three to four months to complete in the UAE mainland.

2.5.4 China

China has benefited greatly from foreign direct investment flows ever since it began to trigger economic reforms and demanded foreign capital participation in its economy in 1979. China is now the largest host nation among developing nations and the world's second-largest recipient of foreign direct investment, behind the United States.

Even though there are many FDI source nations in China, only a small number of these nations account for the total amount invested. As an individual investor, Hong Kong ranks highest, while collectively, the recently industrialized economies (NIEs) have made the largest investments. Since the early 1990s, the following nations: Thailand, the Philippines, Malaysia, and Indonesia, have significantly extended their presence in China.

(the two industrialized nations that have invested in China the most are the United States and Japan, while the other developed countries have invested relatively less)[60].

The primary industries impacted by foreign direct investments are:

- Resources and energy sources;
- Any substantial agricultural commodity;
- Significant facility for the manufacture of equipment;
- Transportation and infrastructure service;
- Cultural goods and services;
- Products and services related to information technology and the internet;
- Services related to finance;
- Important domains in state security where the investor gains real control over the business include;
- Key technologies.

Acquiring real control over the business includes the following situations:

- The foreign investor has less than 50% equity in the company, but voting rights may nevertheless have a big influence on decisions made by the board of directors, shareholders' meeting, or general meeting of shareholders;
- The foreign investor has 50% or more equity in the company;
- Additional events that result in the foreign investor having a major influence on the enterprise's corporate decision-making (e.g., staff and personnel appointments, financing and technology procurement).

[60] See more details on China attractiveness on OECD document "Main Determinants and Impacts of Foreign Direct Investment on China's Economy" (Dec, 2000), available at: https://www.oecd.org/daf/inv/investment-policy/WP-2000_4.pdf

Before making an investment in China, the foreign investor should notify the appropriate authorities. The National Development and Reform Commission (NDRC), which is jointly headed by the NDRC and the People's Republic of China's Ministry of Commerce (MOFCOM), is the appropriate authority in reference to the Working Mechanism Office.

In the case in which It is required a security review for the investment, the authority will inform the applicant in writing within 15 working days of receiving the notification.

If the authority determines during the preview period that the investment is subject to a security review, it must finish the latter within 30 working days of the date of the written decision mentioned above. The results of the security review will determine whether to:

- clear the notification if the investment is deemed to have no impact on state security;
- Determine whether to start a special review if the investment is deemed to have an impact on state security, either actually or potentially.

After the start date, the special review must be finished within 60 working days. This evaluation period may be extended in extraordinary circumstances.

The main regulations involving the rules mentioned above are:

- The Foreign Investment Law of the People's Republic of China[61];
- The State Security Law of the People's Republic of China[62];

[61] More information on "The Foreign Investment Law of the People's Republic of China" on National Development and Reform Commission official website, available at: https://en.ndrc.gov.cn/policies/202105/t20210527_1281403.html

[62] More details on "The State Security Law of the People's Republic of China" on National People's Congress of China official website, available at: http://www.npc.gov.cn/zgrdw/npc/lfzt/rlys/2014-08/31/content_1876769.htm

- Measures for the Security Review of Foreign Investment[63].

The following chapter will delve deeper into the significant foreign direct investment cases in Italy and explore the extent of governmental interference in these instances.

The aim of examining these cases is to gain a comprehensive understanding of the dynamics between foreign investors and the Italian Government, shedding light on the complexities of FDI regulation and its impact on the Italian economy.

It is critical to understand whether certain sectors are deemed strategic or non-strategic by the State and how crucial it is to safeguard the interests of Italian best industries. This inquiry illuminates not only the challenges and opportunities inherent in FDI but also the evolving landscape of governance, accountability, and sovereignty in an increasingly interconnected world.

[63] More details on China FDI framework on EY guide, available in the document at: file:///C:/Users/franc/Downloads/ey-global-foreign-direct-investment-screening-guide-may%20(2).pdf

CHAPTER 3: Popular Golden Power cases in Italy

3.1 introduction on triggering of special powers for Italian cases

The objective of this chapter is to explore specific cases where the Italian Government has triggered its special powers in treating FDI through the use of Golden Power regulation, in particular underlying the motivations behind these interventions and the related consequences.

One of the first actions taken by our Nation was made in 2012, under the leadership of Prime Minister Mario Monti, with the aim of protecting the telecommunication sector. The Italian Government was responding to the acquisition of a significant stake in Telecom by foreign buyers to preserve national interests, sovereignty and the assets deemed as strategic for our economy[64].

Another industry that was safeguarded by the Government continuatively during the previous years and also in the present through the use of Golden Power regulation is the energy sector. For example, in 2017, the Government stopped a transaction concerning the sale of a stake in Terna (an Italian company that was active in electricity industry), to a Chinese State-owned firm[65]. The latter fact shows why Italy is one of the most careful country in protecting companies by predatory buying, always triggering the implications of the regulation.

So, the measures taken by our nation to protect itself from China are only one instance of a worldwide trend. Nonetheless, in an era of intense globalization, some nations have

[64] See more about Telecom actions taken by Mario Monti Government in article "Telecom-Telefonica, un regolamento attuativo di un decreto del governo Monti potrebbe far saltare l'affare", dated 25/07/2013, available on Ilsole24ore official website, at: https://st.ilsole24ore.com/art/notizie/2013-09-24/telecomtelefonica-regolamento-attuativo-decreto-211651_PRN.shtml

[65] See more about China investments in italian electricity sector on article "Il grande piano cinese dell'elettricità mondiale passa da Terna", (Mar, 2017),available on Il Foglio official website, at: https://www.ilfoglio.it/economia/2017/03/21/news/terna-luigi-ferraris-cassa-depositi-e-prestiti-cina-126313/

implemented instruments corresponding to our golden power, rationalizing their deployment on the grounds of national security. It is important to check the significance of economic arguments about the expenses associated with sometimes severe market distortions when faced with risks this large (the intervention of the Government in the economy could be dangerous in some cases for the national as the global market).

These examples are aimed to explaining the multiple nature of the Golden Power and of its mechanisms with the related consequences on the Italian economic landscape. Thanks to this investigation and also to the examination of the latter interventions, it is easy to reveal the motivation driving the Italian Government 's utilization of the framework, and the results of these for foreign buyers and the strategic domestic companies.

Today Italy is continuing to cross the complexities of globalization, digitalization and economic development, knowing that the phenomenon of Golden Power is still a crucial fact for policymakers, foreign investors and all the stakeholders (including the issue concerning the creation of a sustainable society).

The subsequent paragraphs will go deeper into the explanation of specific instances where the Italian Authority has triggered its special powers, analyzing recent transactions and their results. This will be done with the aim of understanding the dynamics involved between governmental investigations and corporate actions in the Italian economic landscape.

In conclusion, it will be explored the foreign context of the regulatory interventions made by the Italian Authority and their impact on market stability and companies growth rate regarding the strategic sectors and foreign direct investment transactions in our peninsula.

This phenomenon is important considering that the intervention can be a pros for the national economy:

- For the safeguard of national interests in some strategic sectors;
- For the protection of the public order and the national secutiy;

But it can also show a cons and a negative trend for the target companies deemed as strategic for the economic wealth:

- It can be a limit for the growth in terms of earnings (affecting profits growth rate) of some companies;
- It can damage the process of internationalization of firms;
- Another cons is the scarcity of appeal by skilled manager about working in Italian companies.

3.2 Is Golden Power a safeguarding tool also for market stability?

The use of the special powers by the Italian Authority is partly driven by a geopolitical motivation. In fact, taking into account the pandemic emergency, it is clear that a significant growth appears justifiable both in the number of notifications and in cases of effective exercise of the Golden Power regulation (these are not fully independent by the nationality of the firms involved in the FDI transactions).

The problem is that these techniques are being used more and more often, even in situations where it can be difficult to immediately identify a threat to national security. This is an interference by the state in the functioning of the market, raising the possibility of classic protectionism and adding to the burden on the economy.

In the end, this will necessitate redistributing company ownership and putting forth profitable innovations and investments. This risk is higher than it has ever been, especially in historical periods like the current shift in production paradigms toward digitization and green technologies. In addition, the use of large tax incentives to speed up the transition is a hallmark of this historical period and carries some risk of protectionist overtones.

The goal is to prevent the misuse and arbitrary application of an essential instrument, which has the potential to cause market distortion and be hazardous. Price signals are impacted by distortions, but corporate governance is more significantly affected. When corporate governance is non-controversial, it inhibits innovation and risk-taking by entrepreneurs.

There is also a chance that Italy, which has delayed behind other developed nations in terms of being an attractive place for foreign investment for decades, will discourage large companies from making additional foreign investments, which would be detrimental to employment and the transfer of managerial and technological know-how as well as technology[66].

3.3 Tim/Kkr case

3.3.1 Tim

Tim, also known as Telecom Italia Mobile, is a leading telecommunications company operating primarily in Italy. Established in 1995, Tim provides a wide range of services including mobile and fixed-line telephony, internet, and digital television.

With a significant presence in the Italian market, Tim offers innovative solutions for both individual and business customers, striving to meet their diverse communication needs. The company is known for its extensive network infrastructure and commitment to technological advancements, positioning itself as a key player in Italy's telecommunications industry.

Tim's dedication to customer service and continuous improvement has solidified its reputation as a reliable provider in the ever-evolving landscape of telecommunications. In conclusion, Tim serves as a reminder that in both personal and professional lives, embracing change, fostering connections, and striving for innovation are key ingredients for success and fulfillment. Whether in the realm of fiction or telecommunications, the story of Tim resonates as a testament to the human spirit's capacity for resilience and progress[67].

3.3.2 Kohlberg Kravis Roberts & Co. L.P. ("KKR")

Kohlberg Kravis Roberts & Co. L.P., or KKR for short, is a well-known international investment business with a focus on real estate, infrastructure, private equity, credit

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[66] More details about the impact of Golden Power on market stability on article "The golden power and the risks to the functioning of the markets", (Aug, 2023), available on Osservatorio Conti Pubblici Italiani official website, at: https://osservatoriocpi.unicatt.it/ocpi-pubblicazioni-il-golden-power-e-i-rischi-per-il-funzionamento-dei-mercati

[67] More details on Tim values and culture on Tim official website, available at: https://www.gruppotim.it/it/lavora-con-noi/i-nostri-valori.html

strategies, and other alternative investments. Jerome Kohlberg Jr., Henry Kravis, and George Roberts founded KKR in 1976, and since then, it has grown to become one of the top investment firms globally.

KKR is a financial management firm that serves high-net-worth individuals and institutional investors such as sovereign wealth funds, pension funds, and other institutional investors. It has offices located in major financial hubs. The company is well-known for its strong involvement in the daily operations and strategic acquisitions, as well as its hands-on approach to investment management.

With a long history of success, this firm has acquired, expanded, and transformed businesses in a variety of industries. Its investing philosophies center on generating wealth via long-term alliances with management teams, strategic acquisitions, and operational enhancements.

Additionally, to provide its clients with a diverse range of investment options, KKR engages in infrastructure, credit, and real estate development to its private equity operations.

All things considered, KKR's standing as a dominant force in the investment management industry is cemented by its stellar reputation, astute financial judgment, and extensive global presence[68].

3.3.3 Case analysis

The Board of Directors of TIM, convened under the presidency of Salvatore Rossi on November 3rd, 4th, and 5th, examined the binding offer presented on October 16th by Kohlberg Kravis Roberts & Co. L.P. ("KKR") regarding the purchase of assets related to TIM's fixed network (the so-called NetCo), including FiberCop, by a company (Optics

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[68] More details on Kohlberg Kravis Roberts & Co. L.P. (“KKR”) values and culture on Kohlberg Kravis Roberts & Co. L.P. (“KKR”) official website, available at: https://www.kkr.com/about

BidCo) controlled by KKR, as well as the non-binding offer for TIM's entire stake in Sparkle.

Following a comprehensive and thorough examination, conducted with the assistance of leading financial advisors (Goldman Sachs, Mediobanca, and Vitale & Co for the Company, and Equita and LionTree identified by the Independent Directors) and legal advisors (Gatti Pavesi Bianchi Ludovici Studio legale associato for the Company and Studio Carbonetti for the Independent Directors), the Board approved by majority vote (with 11 in favor and 3 against) the binding offer for NetCo presented by KKR.

This decision reflects the Board's confidence in the strategic alignment and potential benefits of the offer, as well as the thorough evaluation process conducted with the support of renowned financial and legal experts. It marks a significant step forward in TIM's strategic initiatives and underscores the Board's commitment to maximizing value for shareholders while navigating complex transactional landscapes.

The implementation of the so-called "delayering" plan by TIM in 2022 marks a significant step towards overcoming TIM's vertical integration by separating its fixed network infrastructure assets from the services it continues to provide to retail customers. This strategic move allows TIM to reduce its financial debt by approximately 14 billion euros at the time of closing, notwithstanding price adjustments and potential earn-outs. Despite the challenging macroeconomic conditions, this outcome surpasses the forecasts presented during the Capital Market Day in July 2022.

Through this operation, TIM not only reduces its debt burden and frees up resources but also gains the opportunity to operate in the domestic market with fewer regulatory constraints. Additionally, it can contribute to maintaining the strategic flexibility outlined in the delayering plan.

Upon closing, TIM will benefit from a robust capital structure, with a net debt-to-EBITDA ratio of less than 2 times (after lease). The completion of the transaction is expected in the summer of 2024, pending the fulfillment of preparatory activities and the satisfaction of suspensive conditions such as the completion of the primary network transfer, Antitrust authorization, approval regarding distorting foreign subsidies, and compliance with the Golden Power regulations[69].

Regarding the non-binding offer for Sparkle, the Board, deeming it unsatisfactory, has tasked the CEO with exploring the possibility of receiving a binding offer at a higher value post-completion of due diligence, with the deadline extended until December 5th.

Furthermore, the Board acknowledged the communication sent by Merlyn Partners and RN Capital Partners, finding it not aligned with the Company's delayering plan, as presented to investors during the aforementioned Capital Market Day.

These developments underscore the Board's diligence in evaluating strategic offers and ensuring alignment with the Company's long-term objectives. The extension of due diligence reflects a commitment to maximizing value for stakeholders, while the Board's stance on offers is indicative of its adherence to the outlined corporate strategy[70].

As stated in the company's official release, subject to certain criteria, the binding offer values the fixed network at 18.8 billion euros, with the possibility of reaching up to 22 billion euros.

The completion of a potential NetCo consolidation operation and the potential introduction of regulatory changes to benefit NetCo, could result in payments to Tim of up to 2.5 billion euros, as another conditions. Another important point of the offer regard Industry incentives which could be introduced and enforced by December 31, 2025, and could result in payments to Tim of up to 400 million euros. In addition, the long-awaited merger with Open Fiber discussed in the latter case, which is presently unfeasible because of antitrust concerns.

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[69] See more on Tim/KKR details on Gruppo Tim official website, (Nov, 2023(, available at: https://www.gruppotim.it/it/archivio-stampa/corporate/2023/CS-5-novembre-def.html

[70] More details about this data on Tim press release document, available at: https://www.gruppotim.it/content/dam/gt/archivio-stampa/corporate/2023/CS-5-novembre-def.pdf

Vivendi, one of Tim's largest shareholders with a stake of over 24%, was in disaccord about the move to KKR, even though the government may be pleased with it. As noted in the statement sent by the French business, Vivendi was disappointed that the Tim board has accepted KKR's offer to purchase Tim's network without first informing and seeking a vote from its shareholders, thus contravening applicable governance rules.

The Tim board decision to sell the entire infrastructure network without shareholder input was prompted Vivendi to consider legal action. Vivendi argued that the sale constituted a significant change in Tim's corporate purpose, requiring prior approval from the extraordinary assembly. Additionally, Vivendi alleged that the decision failed to adhere to regulations regarding transactions with related parties, given the involvement of the Ministry of Economy and Finance which own a stake in Tim and Cdp (Cassa depositi e prestiti[71]).

Merlyn Partners[72], a fund holding less than 3% of Tim, shared the same sentiment. They believed that the board's decision to approve KKR's offer without subjecting it to a shareholder vote was disrespectful and not diligent. Moreover, making this decision not unanimously as previously announced, without listening to all shareholders, constituted

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[71]More details about Cdp - “CDP is a publicly controlled joint-stock company, whose majority shareholder is the Ministry of Economy and Finance. Minority shareholders are foundations of banking origin. The aim is to collect financial resources from postal savers and the market to support public bodies, businesses and infrastructures, generating impact on the territory.”, available on Cassa Depositi e Prestiti official website, at: https://www.cdp.it/sitointernet/it/cdp_chi_siamo.page

[72] More details on Merlyn Partners LLP – “The corporate finance advice boutique Merlin Partners LLP ("Merlin") is situated in London and is regulated by the FCA, providing companies with strategic advice and capital raising expertise since 2002.”, on Merlyn Partners official webaite, available at: https://merlinpartnersllp.com/

a lack of respect for the stability of the market and the most basic principles of good corporate governance[73].

3.3.4 The decision of the Government

The government has granted approval, under the golden power provisions, for the sale of the Telecom network. Tim himself announced this before the stock market opening. According to the statement released, the authorization provision, through which the Council of Ministers exercised special powers in the form of specific prescriptions, embraced the commitments put forth during the procedure. These commitments were considered by the Government to be entirely adequate in safeguarding the strategic interests associated with the assets involved in the transaction.

However, the Government has imposed some clauses by exercising its special powers:

- In addition to the 20% capital participation in Netco, the Treasury will also enjoy governance prerogatives that have previously been agreed upon by the parties and that effectively designate the public shareholder as a "qualified minority".

- The fund that F2i[74] particularly established to purchase an additional 10% of Netco, with contributions from social security organizations and banking foundations, is also in the works.

[73] See more on article "Tim accepts the offer of the KKR fund (and the Mef): a 22 billion euro operation. But Vivendi rises up", (Nov, 2023), by M. Carrà, on Forbes official website, available at: https://forbes.it/2023/11/06/tim-accetta-lofferta-del-fondo-kkr-e-del-mef-operazione-da-22-miliardi-di-euro-ma-insorge-vivendi/

[74] More details on F2i Fund - F2i SGR is the largest independent Italian manager of infrastructure funds, with assets under management of approximately 8.2 billion euros between equity and debt. The companies that are part of the F2i network constitute the main infrastructure platform of the country, diversified into six strategic sectors for the economic system: transport and logistics, energy for the transition, distribution networks, telecommunications networks, socio-health

3.3.5 Conclusion of the case

This case is an example of a situation in which the Government has approved the transaction, but always exercising its special powers considering the Golden Power regulation[75].

It is worth to note that the Authority was not limiting the market stability and the independence of the two companies, through the growth opportunity brought by the operation without permitting the entrance of KKR in Tim, but has chosen to interfere within some limits as the participation through some public entities in the share capital of the new firm named Netco.

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infrastructures and economy circular. See more on F2i official website, available at: https://www.f2isgr.it/it/index.html

[75] See more on article "Government gives green light to the sale of the TIM network to KKR, but with requirements", (Jan, 2024), by A. Olivieri, available on Ilsole24ore official website at: https://www.ilsole24ore.com/art/tim-governo-autorizza-cessione-rete-kkr-AFLrs3MC

3.4 Tim/Vivendi case

Vivendi S.A.'s strategic maneuvering is demonstrated by its steady acquisition of a 23.94% interest in TIM S.p.A., a significant participant in the telecommunications industry, as it was already explained.

Starting with a series of acquisitions that were started in June 2015, Vivendi[76] positioned itself within TIM's share capital in a way that demonstrated a purposeful attempt to exert influence within the business.

Vivendi's efforts came to fruition on May 4, 2017, during the TIM general meeting. The French company ability to align the governance structure of TIM with its strategic objectives is demonstrated by the fact that, following the filing of a slate of 10 candidates, its nominees held the majority of the board seats.

This case highlights the significance of corporate governance dynamics and strategic decision-making in the telecom sector, mirroring broader trends of stakeholder involvement and consolidation

3.4.1 Case analysis

The TIM board of directors recognized on July 27, 2017, that Vivendi had taken over leadership and supervision of TIM.

On August 5, 2017, the Ministry for Economic Development in Italy notified TIM and Vivendi of the start of an investigation into potential violations of the Law Decree's notification requirements pertaining to Vivendi's acquisition of TIM's ordinary shares, which was done on the assumption that Vivendi's owner would then have controlling

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[76] More details about Vivendi – "The holding corporation for French mass media, Vivendi SE, is based in Paris. In addition to being a majority owner of the Lagardère Group, it owns Gameloft, Groupe Canal+, Havas, Prisma Media, Vivendi Village, and Dailymotion.". See more on Vivendi official website, available at: https://www.vivendi.com/en/our-group/at-a-glance/

power, and the resolutions passed by TIM's board of directors on July 27, 2017, and its general meeting on May 4, 2017.

The Ministry of Defense, the Ministry of the Interior, and the Ministry of Economy and Finance, among other Italian Public Administrations, were specifically involved in the aforementioned investigation and emphasized that TIM, through its fully owned subsidiaries Telsy Elettronica e Telecomunicazioni S.p.A. and Telecom Italia Sparkle S.p.A., holds certain assets and engages in certain activities that will be considered "strategic" in accordance with Article 1 (national defense and security) and Article 2 (communications) of the Law Decree.

Consequently, on September 28, 2017, the Italian Government informed Vivendi and TIM of the investigation's conclusion by evaluating the violations of the notification obligations stipulated in Article 1, paragraph 5 of the Law Decree by Vivendi and Article 2, paragraph 2 of the Law Decree by TIM. Furthermore, the Presidency of the Council of Ministers initiated an additional procedure with this communication to impose on TIM the pecuniary sanctions outlined in Article 2, paragraph 4 of the Law Decree concerning the company's failure to comply with the previously mentioned notification obligations.

The Presidency of the Council of Ministers issued two Presidential Decrees on October 16, 2017, and November 2, 2017, respectively, imposing on Vivendi, TIM, and its subsidiaries the aforementioned requirements and conditions intended to ensure the operational continuity of TIM's "strategic" activities, along with specific reporting obligations.

3.4.2 The Decision of the Government

As expected, on August 28, 2017, the Presidency of the Council of Ministers concluded the investigation process by evaluating whether Vivendi and TIM had violated the notification requirements imposed on them by Article 1, paragraph 5, and Article 2, paragraph 2, of the Law Decree, respectively.

The violation with regard to Vivendi was the noncompliance with the notification obligation regarding the acquisition of the controlling stake held in the share capital of

TIM, a business considered "strategic" for the national defense and security sector (see Article 1, paragraph 1, letters a) and c), of the Law Decree), in various tranches.

The Law Decree specifically requires the buyer to notify the seller of any acquisition of shares in companies whose operations are important to the country's security and defense within ten days, regardless of the title. Therefore, regardless of the delayed notification made on October 12, 2017, Vivendi was required to notify each purchase of TIM's ordinary shares.

The "strategic" nature of TIM and its subsidiaries should have been evident from Vivendi's due diligence procedure prior to Vivendi purchasing TIM's shares, the Italian Government noted in evaluating Vivendi's noncompliance with these responsibilities.

The government also claimed that since Vivendi is the only "industrial" shareholder in TIM and appointed four members of the board of directors, including the vice-chairman, since the general meeting on December 15, 2015, Vivendi should have known about the "strategic" nature of TIM in any case.

Regarding TIM, the Italian Government said that the company had not complied with the Law Decree's notification requirements for companies possessing assets important to the country's energy, transportation, and communication sectors.

Specifically, as per the Law Decree's Article 2, paragraphs 2 and 4, any company that owns an asset that is significant for the purposes of Article 2 must notify the government "when such resolutions, actions or transactions result in the loss of ownership, control or availability of such relevant assets or in a change in their destination of use".

In light of the abovementioned, the fact that Vivendi nominated the majority of the TIM board of directors during the company's general meeting on May 4, 2017, in addition to other factual circumstances (such as the recognition of the start of Vivendi's direction and coordination activity over TIM), pushed the European Commission and Consob to conclude that Vivendi had gained de facto sole control over TIM.

Based on these evaluations, the Presidency of the Council of Ministers claimed that Vivendi's takeover of TIM on May 4, 2017, imposed the notification requirement on TIM under Article 2, paragraph 2, of the Law Decree, and led to the subsequent use of the Golden Powers to impose particular requirements and guidelines.

Indeed, from the government's point of view, TIM's takeover signaled the end of Vivendi's access to the pertinent assets[77].

3.4.3 Conclusion

Some conclusions are strengthened by the examination of the Italian legislation on Golden Powers and the methods by which it was used in the Vivendi / TIM leading case:

1. Firstly, the case in question highlights the need of being able to precisely identify the legislation that applies in a given situation as well as the necessity of filing a notification for Golden Powers purposes. Since TIM's assets are in fact deemed substantial by both Article 1 and Article 2 of the Law Decree, various transactions may result in notice requirements and the use of the Golden Powers. This may deter investors from making investments in Italian companies and breed uncertainty among market participants. The trend of late indicates a marked rise in the number of notifications made to the Italian government as a preventive measure to avert the imposition of the onerous penalties mentioned before. From this angle, this trend is further reinforced by the expansion of the sectors and triggering events that follow the modifications made by the Italian legislator in response to the Covid-19 pandemic.

2. Secondly, as evidenced by the four extensions that occurred in the Vivendi / TIM case, the process to determine whether or not to use the Golden Powers may also be drawn out and complex, requiring the participation of various public administrations with disparate backgrounds in the workforce. Because a drawn-out investigative process could cause the transaction to be frozen, such a situation

[77] Consob Communication No. 0106341 of 13 September 2017, available at www.consob.it. The judgment no. 07972/2020 of 15 October 2020 and 7 December 2020 (published on 14 Dec, 2020) issued by the Council of State deleted (annulled) the Consob Communication upon Tim’s claim.

increases market operators' uncertainty and influences their investment decisions[78].

[78] Sacco Ginevri, Commentaries and Cases on Italian Business Law (second edition), chapter 23, on foreign direct investments by Lorenzo Locci, pages 277-281, paragraph “The Vivendi/Tim case, (July 2021).

3.5 The Pirelli/Sinochem Holdings (China National Tire & Rubber Co, Ltd.)

An important case to analyze concerns FDI operations which consider the shareholder agreements between multiple shareholders of the company, and not only the acquisitions of significant stakes by one or more foreign investors as individual entities, without providing for, or stipulating clauses for contracts resulting by acting in concert operations.

One of the most popular and recent cases concerns the intervention of the Meloni Government in the FDI operation relating to the Italian tire specialist company called Pirelli, and the Chinese tyres company named China National Tire & Rubber Co, Ltd.

3.5.1 the facts concerning the case

The government's decision to exercise 'golden power' over the deal involving China National Tire and Rubber Corporation, Ltd. (also known as Sinochem Holdings, a Chinese state-owned multinational conglomerate[79]) and the governance agreement[80]

[79] More details on Sinochem Holdings – "China National Tire & Rubber Co., Ltd. stands as a premier global tire manufacturer, steadfast in its pursuit of establishing a top-tier, all-encompassing rubber and tire enterprise distinguished by technological advancement and brand excellence. Our expansive footprint spans across 13 countries, housing 24 state-of-the-art manufacturing facilities. Operating with a sales network that reaches over 160 countries and territories worldwide, our operations encompass the full spectrum of tire and rubber products. From cutting-edge research and development to precision manufacturing and extensive distribution, we specialize in delivering a wide array of consumer tires, ranging from those tailored for cars and SUVs to motorcycles and bicycles. Furthermore, our industrial tire offerings extend to truck and bus tires, off-the-road tires, agricultural tires, and rubber conveyor belts, solidifying our position as a comprehensive solution provider in the global tire industry.". See more details on Sinochem Holding official website, available at: http://rubber.chemchina.com/xiangjiaoen/26014.html

[80] Sacco Ginevri, "Another way to materially change the ownership structure of a listed company is to enter into shareholders' agreement concerning voting rights or share transfers limitations. Pursuant to article 122 of Italian Security Act shareholders' agreement, in whatever form (even oral), entered into, must be communicated to Consob and to the target company, as wll as filed with the competent companies' register and published on a newspaper",

(Increasing the degree of political influence and the make-up of the management teams in the participating company were two of these; additionally, there is a plan to combine the Sinochem systems and the IT systems of the Pirelli companies in China so that data can be shared simultaneously[81]) concerning Pirelli & C. S.p.A[82], as decided in the Council of Ministers meeting on June 15, 2023, underscores the strategic importance the Italian government places on maintaining control over key industries and assets within its borders.

This move, proposed by the Ministry of Enterprise and Made in Italy, reflects a broader trend of national governments intervening in significant corporate transactions to protect national interests, especially when it involves critical infrastructure or leading companies in sectors deemed essential for economic security and national competitiveness.

Commentaries and Cases on Italian Business Law. Chapter on Acting in concert, page 44 et seq. (July 2021).

[81] More details on governance agreements in article "Pirelli, Chinese invasions of the pitch in the government's sights: Sinochem's interference in company management.", (May, 2023), by R. Dimito, on Il Messaggero official website, available at: https://www.ilmessaggero.it/economia/news/pirelli_cinesi_interferenze_governo_golden_power_ultime_notizie-7419768.html

[82] More details about Pirelli – "Operating across 12 countries with 18 production facilities and a widespread commercial footprint spanning more than 160 locations, Pirelli boasts a workforce of approximately 31,300 employees. In 2022, the company achieved a turnover of approximately 6.6 billion euros. Renowned as one of the leading global manufacturers of tires and related services, Pirelli holds a distinctive position as the sole entity exclusively dedicated to the Consumer tire market. This market segment encompasses a wide range of tires tailored for automobiles, motorcycles, and bicycles, solidifying Pirelli's significance in this industry.". See more on Pirelli official website, available at: https://corporate.pirelli.com/corporate/en-ww/aboutus/pirelli-in-brief

The application of 'golden power' in this context highlights the balance countries are trying to strike between welcoming foreign investment and safeguarding sovereignty and national security.

3.5.2 Why is Pirelli deemed as strategic?

The government's decision, which is being explained, provides appropriate guidelines for the protection of the strategic asset made up of impervious cyber sensors in pneumatic systems.

These sensors may gather information from the surrounding vehicle, including the state of the infrastructure, the location of the vehicles, and their assets.

The collected data can be fed into cloud computing and super computing systems to create digital models that can be used in cutting-edge systems like digital twins and smart cities using artificial intelligence.

The application of this technology can be found in many different fields, including:

- industrial automation;
- machine-to-machine communication;
- machine learning;
- advanced manufacturing;
- artificial intelligence;
- critical technologies for sensing and actuators;
- big data, and analytics.

In these sectors, cyberspace is positioned as a critical national strategic rilevanza technology.

When this technology is used improperly, there could be serious risks not only to user privacy but also to the potential transfer of sensitive information that could compromise security. The purpose of the government's regulations is to establish a network of measures that safeguard:

1. the autonomy of Pirelli & C. and its management;
2. the security of procedures; the protection of strategic information;

3. the know-how held by society[83].

3.5.3 The decision of the Government

By obtaining a strategic industrial security clearance, which places restrictions on information accessibility, Pirelli arms itself with a number of instruments for safeguarding the strategic asset.

Moreover, a separate organizational unit dedicated to safety will also be established by the business.

In the end, a minimum of 4/5 of the board of directors must vote in favor of the government's recommendations for certain strategic choices. The competent Ministry will oversee how the requirements are being implemented[84].

3.5.4 Conclusion

For Pirelli & C. S.p.A. corporation, the Italian government would have enforced its own terms for a shareholders' agreement that was specified by the two main shareholders.

A shareholder agreement is a private contract that is established by two or more shareholders to accomplish shared goals, such, say, the most stable government power possible.

In this instance, the agreement stipulated that Camfin, the Italian shareholder, would no longer be able to nominate candidates for the company's executive positions (as the Chiex Executive Officer), for example, and that the number of directors on the board of directors would be lowered immediately (this change would take effect in 2026).

[83] See more on article "Palazzo Chigi: Golden power on Pirelli to protect Cyber sensors. Tajani: we protect China's sensitive data", (Jun, 2023), on Ilsole24ore official website, available at: https://www.ilsole24ore.com/art/palazzo-chigi-golden-power-pirelli-tutela-sensori-cyber-AEP3xAjD

[84] More details on intervention of the Government in Pirelli case in article "The government intervenes in the Chinese assault on Pirelli: green light for golden power with prescriptions.", (Jun, 2023), by F.Q., on Il Fatto Quotidiano official website, available at: https://www.ilfattoquotidiano.it/2023/06/16/il-governo-interviene-sullassalto-cinese-a-pirelli-via-libera-a-golden-power-con-prescrizioni/7197493/

In order to save the corporate system's strategic asset (in this case specified by the “Cyber” sensors, which can be installed in tires), the government has every right to interfere taking appropriate action to safeguard the interests of the country.

These sensors would be especially useful for gathering geolocation and infrastructure condition data from vehicles. As a result, this data may be utilized to build digital models for usage in cutting-edge systems, possibly with the aid of artificial intelligence.

The fact that these sensors are employed in a variety of industries, including big data & analytics, advanced manufacturing, artificial intelligence, and industrial automation, indicates their national strategic importance.

Therefore, the risk that could result in improper use of this technology by the foreign partner is what prompted the government to intervene, both in terms of protecting personal data and national security[85].

[85] More details on conclusion of Pirelli case on article “Il golden power e il caso Pirelli”, (July, 2023), on Zanichelli official website, available at: https://online.scuola.zanichelli.it/ultimora/2023/07/05/il-golden-power-e-il-caso-pirelli/

3.6 The Microtecnica/Safran case

The $1.8 billion acquisition of Collins Aerospace's flight control systems division by French company Safran has been rejected by Italy. The Italian government gave Reuters an explanation of the situation, saying that it had worry with employment and contracts related to the Eurofighter program.

Actually, Safran did not offer enough guarantees about the maintaining of the Italian production lines[86].

3.6.1 The facts concerning the case and the national interest of Microtecnica

The Microtecnica operation was vetoed by the government, and Rtx and Safran appealed this decision at the Lazio Regional Administrative Court (TAR[87]).

The appeal stems from the Italian executive's use of the golden power to prevent the French Safran group from purchasing the Turin-based company, which is currently held by the massive American defense company Rtx.

The action was driven by the fact that Microtecnica provides supplies and spare parts for NATO programs, such as the Eurofighter and Tornado jets, which are of national importance[88].

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[86] See more on article "Italy uses golden power on Microtecnica and stops the French Safran", (Nov, 2023), on Ilsole24ore official website, available at: https://www.ilsole24ore.com/art/l-italia-usa-golden-power-microtecnica-e-ferma-francese-safran-AFVcGEjB

[87] The TAR (Regional Administrative Courts) are bodies of administrative jurisdiction, competent to judge appeals lodged against administrative acts by private individuals who believe their legitimate interests have been violated.

[88] See more in article "Microtecnica, Safran and Rtx appeal to the TAR against the golden power in aerospace. The Mecaer hypothesis", by F. Bertolino and D. Polizzi, (Jan, 2024), on Il Corriere Della Sera official website, available at: https://www.corriere.it/economia/aziende/24_gennaio_12/microtecnica-safran-rtx-ricorrono-tar-contro-golden-power-nell-aerospazio-l-ipotesi-mecaer-1244bb2a-b0b4-11ee-a325-593ff8bfe988.shtml

3.6.2 Microtecnica S.R.L. (Collins Italy)

Currently held by RTX subsidiary Collins Aerospace, Microtecnica is a component of Collins' flight controls division.

Founded in 1929, Microtecnica S.R.L. is a firm based in Turin. Known for its superior precision mechanics, the company has focused mostly on aerospace products since the 1970s.

The company is specialized in the design, qualification, manufacturing, and post-purchase support of actuation systems for engine valves, temperature control systems, primary and secondary flight controls, and space equipment[89].

3.6.3 Safran

Safran is a leading international high-technology group, specialized in aerospace, defense, and security sectors. With a rich heritage dating back over a century, Safran has consistently pushed the frontiers of innovation, driving advancements in various fields crucial to modern society. The company was founded in 2005 through the merger of Snecma and Sagem and has grown into a global powerhouse, boasting a diverse portfolio of cutting-edge products and services.

Safran's extensive product portfolio includes a variety of options for the aerospace and defense industries. Safran is a key player in determining the direction of aviation and defense, providing everything from helicopter turbines, landing gear systems, and propulsion equipment to engines for commercial and military aircraft.

Safran is a global player with a strong presence in important aerospace and defense areas across multiple continents. Safran is a worldwide leader in high-tech solutions, and it keeps growing by forming strategic alliances, joint ventures, and partnerships with key players in the sector.

[89] More details on Microtecnica (Collins Italy) on Microtecnica S.R.L. official website, available at: https://www.distrettoaerospazialepiemonte.com/azienda/microtecnica-s-r-l/

With a rich history of success and excellence, Safran is focalised to continue leading the way in delivering innovative solutions that redefine the possibilities of flight and security for its customers[90].

3.6.4 The appeal

Microtecnica S.R.L. has finally decided to appeal the Government's decision, the final result of which will be expected next July.

The reason for the appeal concerns the fact that the company provides many jobs in Italy, in fact the latter are estimated at 450 workers in Turin, 90 in Luserna San Giovanni (situated near Turin) and 120 in Brugherio (situated near Milan)[91].

Thus, the negotiations did not totally collapse, but it is unusual for Italy to obstruct an ally that is a part of the EU and NATO; in reality, the Golden Power has been used in the past to sto'p acquisitions by Chinese or Russian enterprises in the fields of energy and 5G technology.

In the naval domain, however, the roles were inverted, with Paris, supported by Brussels, formally undermining the accord that would have allowed Fincantieri to officially take control of the Saint-Nazaire shipyards. Emmanuel Macron, the president at the time, made

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[90] More details on company objectives on Safran official website, available at: https://www.safran-group.com/

[91] More details on Microtecnica appeal and jobs in Italy on Ansa official website, available at: https://www.ansa.it/piemonte/notizie/2024/01/11/microtecnica-fara-ricorso-contro-golden-power-del-governo_56195006-941a-401f-a7e7-19630bffe589.html

the choice and subsequently gave the order for Chantiers de l'Atlantique[92] to be nationalized[93].

3.7.1 Chinese investments in Italy

In May 2019, Zhen Fund, a well-known venture capital firm in China, partnered with Btov, a European company, invested €1.7 million in the Italian startup Stamps, marking a key milestone in the financial landscape between China and Italy. This significant investment was made in the latter startup, concerning an app that allows tax-free purchases to be made using mobile devices.

This marks the first time that venture capital from China has ever invested in Italy. However, this historic development is a part of a larger story about Chinese purchases in Italy, which has grown dramatically over the last ten years (by more than 20 times).

Without including transit hubs like Hong Kong and Singapore, Italy stands out as the fifth global destination for Chinese investments. Our Country is ranked third among European countries, above France but below Germany and the United Kingdom. This pattern highlights China's interest in Italy and its potential for investment, as well as the changing nature of global investment flows.

The first wave of Chinese investments in Italy was focused mostly on industrial products makers, taking advantage of the specialized markets and disruptive technologies that

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[92] More details about Chantiers de l'Atlantique – "is one of the world leaders in the markets for high-end naval complexes and offshore installations.". See more on Chantiers de l'Atlantique official website, available at: https://chantiers-atlantique.com/

[93] More details on Microtecnica appeal result in article "Saved by the French. Meloni's move with the Italian company Microtecnica", by G. Lo Nostro, (Nov, 2023), on Il Giornale official website, available at: https://www.ilgiornale.it/news/politica-economica/meloni-salva-microtecnica-dalle-mire-francesi-ed-esercita-2244160.html

Italian businesses lacked in their offerings (purchasing a majority interest in Pirelli for €7.2 billion and selling minority holdings in Cdp Reti and Ansaldo Energia to Chinese partners were two significant transactions).

With an emphasis on mechanics, the next wave saw the rise of the consumer goods industry, particularly in the areas of fashion and luxury, as demonstrated by purchases such as Caruso and an 85% share in Buccellati.

Recent acquisitions of FC Inter and AC Milan serve as examples of the trend toward high-tech industrial goods and entertainment. Investors' interest in smaller firms' pure technology has grown over the last two years, with a focus on strategic alignment rather than quick profitability. This development is a reflection of the shifting industrial priorities and strategic goals that have shaped China's investment landscape in Italy.

Following years of economic crisis, the entry of fresh capital into Italian companies offers considerable benefits:

- potentially serving as a catalyst for growth;
- facilitating investment in R&D projects;
- enhancing market penetration in China.

But there are risks associated with these prospects as well:

- An important worry is the possibility of transferring intellectual property to China, a country with a complicated IP system;

- Furthermore, it is also impossible to ignore the possible effect on Italy's 10% unemployment rate at the moment.

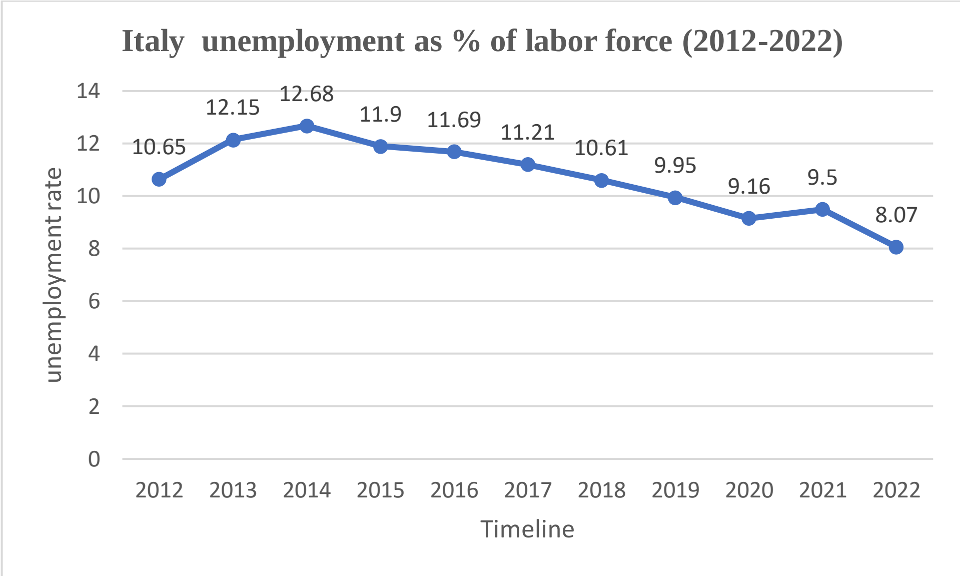

Figure 3 Italy unemployment as % of labor force (2012-2022)- Data from World Bank website[94]

Finding a balance between leveraging Chinese investment advantages and reducing related risks will be crucial to defining a future of economic cooperation that benefits both China and Italy.

The United States continues to assert its dominance as the leading investor in Italian companies, with an impressive $15 billion invested over the past three years, as reported by the financial platform Mergermarket[95].

This demonstrates the Italian corporate assets' lasting attraction on the international scene. Nevertheless, in the middle of this global interest, the European Union's regulatory framework becomes crucial.

[94] More details on data used for Figure 3 graph on World Bank Excel document, available at: https://data.worldbank.org/indicator/SL.UEM.TOTL.ZS?locations=IT

[95] More details on Mergermarket platform – "Leverage the most powerful origination platform in M&A. Built on industry leading journalism and predictive analytics". See more on Mergermarket official website, available at: https://info.mergermarket.com/

Efficient regulatory measures can ascertain whether foreign partnerships with Italian enterprises cultivate authentic transnational collaboration or run the risk of reducing to simple asset sales.

Since Italy's economy continues to draw in foreign capital, it is crucial to pay close attention to regulatory details in order to make sure that partnerships support the goals of both foreign investors and Italy's economic growth and are mutually beneficial[96].

3.7.2 US investments in Italy and the focus on southern regions

An investment fund platform including Italy and the countries of the Atlantic Pact, with an emphasis on the US, is being established as part of the foundation that will help with investments in Southern Italy.

The goal of the initiative, which is being led by the Transatlantic Investment Committee (TIC)[97] and backed by a number of diplomatic and organizational bodies, including the Etna Hitech Consortium[98], is to increase American and Italian joint investments in fields such as digital, aerospace, cleantech, energy, and life sciences. Engaging important

[96] More details on Chinese investments in Italy in article "Acquisitions from China: is Italy really for sale?", by R.M. Silvestri, (Oct, 2019), on Forbes official website (Business section), available at: https://forbes.it/2019/10/09/investimenti-cinesi-in-italia-siamo-davvero-in-vendita/

[97] More details on Transatlantic Investment Committee (TIC) – "The Transatlantic Investment Committee or T.I.C., was started as a project in October 2021, founded by the AMERIGO Association, the American Chamber of Commerce – Italy, the American Studies Center and Federmanager, in close collaboration with the Embassy of Italy in the United States and of the US Embassy in Italy.". See more on transatlantic investment committee official website, available at: https://www.transatlanticinvestmentcommittee.com/

[98] More details on Etna Hitech – "EHT is a group of IT companies, which operates in the field of public and private procurement and promotes research and development, in different application areas and with multiple projects". See more details on ETH European Union official website, available at: https://www.eht.eu/fabbricheconsorziate/

investment decision-makers from Italy, the US, Europe, and the UK is one of the foundation's partnerships, along with the America's Frontier Fund[99].

The Foundation business plan has outlined three strategic points for 2023-2024:

- Firstly, it aims to develop a transatlantic ecosystem of strategic and innovative finance. This involves launching the Transatlantic Investment Fund (H-TIF) in collaboration with Harmonic Innovation Group[100]. The fund, with a target size of €500 million, seeks to foster synergies with similar frontier initiatives on the East and West Coasts of the United States.

- Second, the Foundation intends to create and oversee a transatlantic investment platform with the goal of combining the transaction flow of about twenty funds with comparable goals and features from the American and European regions. The recent agreement with America's Frontier Fund and possible collaboration with the European Commission's Esna[101] initiative will be advantageous to this project. The objective is to create an Institutional Transatlantic Venture Capital Fund of Funds, with a target size of €4 billion, by bringing together a number of important institutional participants over the course of the next two years. The strategy aims to capitalize on the existing deal-flow, which comprises a portfolio of over 200

[99] More details on America's Frontier Fund – "America's Frontier Fund is a non-profit deep-tech fund that invests strategic capital in foundational technologies critical to U.S.". See more on America's Frontier Fund official website, available at: https://americasfrontier.org/

[100] More details on Harmonic Innovation Group – "An ecosystem where institutional, social stakeholders and government agencies will share a common and harmonious effort of dialogue, planning, research and development to bring out technological, environmental, social, cultural, strategic and political solutions useful for safeguarding the planet.". See more on Harmonic Innovative Group official website, available at: https://harmonicinnovationgroup.it/

[101] The implementation of ESNA is supported by the HORIZON EUROPE programme of the European Commission through the project Nº 101072644. See more on European Commission's Esna and on project n. 101072644 on Esna Alliance European official website, available at: https://esnalliance.eu/

companies, while also drawing talent and startups from the Euro-Mediterranean region. It further involves integrating the most promising solutions from these accelerators into a network of Italian small and medium-sized enterprises, that is initially focusing on the 70 companies affiliated with Etna Hitech. This approach seeks to stimulate innovation and expansion within the Italian business sector by amalgamating current resources with fresh talent and ideas.

- The upcoming launch of the Transatlantic Business Executive Course, a postgraduate program focused on transatlantic co-investments, is a significant development. This initiative, driven by collaboration between Luiss and George Washington University, is set to commence in the first half of 2024. It reflects a strategic emphasis on investing in startups and scale-ups, particularly within the transatlantic market and Tic-targeted technologies.

As highlighted by the President of the Transatlantic Harmonic Foundation, the latter point is a unique opportunity for Italy to strengthen its ties with the United States in co-investments focusing on high-value strategic technologies. These technologies not only have the potential to enhance productivity in industrial systems but also address critical challenges such as security, climate change, health, energy supply, and space exploration. Moreover, they can create new, high-quality job opportunities with competitive compensation[102].

US investors are attracted by Italy private companies also because they aren't required to obtain the Environmental Product Declaration (EPD), that is an internationally-recognized certificate based on the environmental and social impact of their products or

[102] More details on United States investment in Southern Italy in article "An Italy-US foundation to attract investments to the South", by N. Amadore, (Oct, 2023), on Ilsole24ore official website, available at: https://www.ilsole24ore.com/art/una-fondazione-italia-usa-attrarre-investimenti-al-sud-AFyUFfEB

services (it is worth to note that many Italian firms are applying and disclosing it voluntarily)[103].

Despite Italy's attractiveness towards the US, in the last 10 years our country has achieved FDI values in the United States greater than those of the latter:

1. Up from $38 billion in 2020, against the $27.46 billion of United States in our country;

2. The overall value of Italian investments made in the US reached $34.3 billion in 2021, rather than 28 billion of United States in our country for the same year;

3. 2017 saw the stock reach $30.4 billion, against the $27.62 billion of United States in Italy.

Compared to $2.6 billion in 2020, the amount of new investments were essentially constant at $2.5 billion in 2021.

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[103] More details about regolatory framework between United States and Italy concerning Foreign Direct Investments on U.S. Department of State official website of the United States Government, available at: https://www.state.gov/reports/2023-investment-climate-statements/italy/

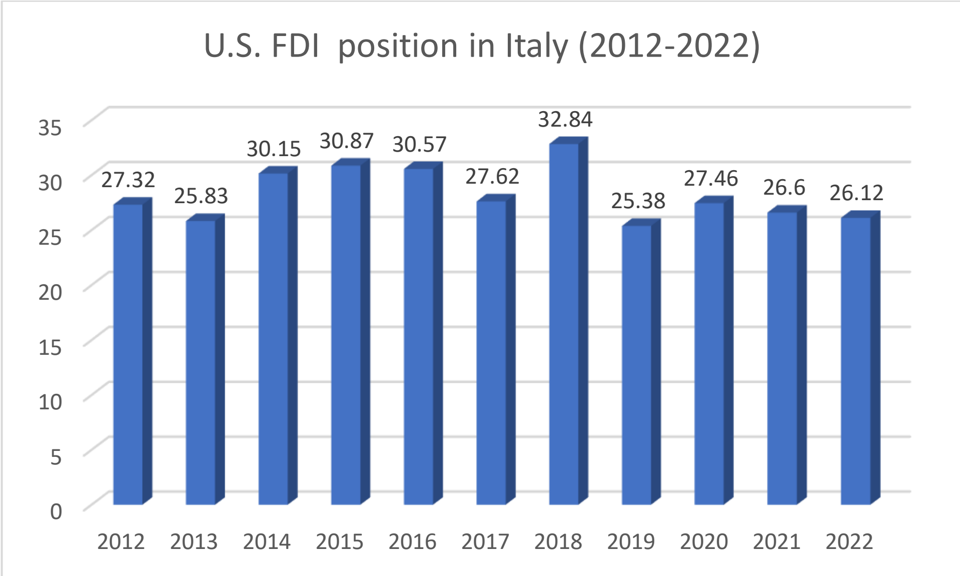

Figure 4 - U.S. FDI position in Italy (2012-2022). – Data from Statista and Consolato Generale d'Italia a Houston[104]

After Germany, the United States is Italy's second-largest trading partner outside of Europe. The U.S. Department of Commerce reports that bilateral commerce in goods and services increased by 23.5% from 2021 to a record $117.3 billion in 2022. The amount of

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[104] More details on data used for Figure **Error! Main Document Only.** - U.S. FDI position in Italy (2012-2022) available on Statista and Consolato Generale d'Italia official website, availablr at:

STATISTA: https://www.statista.com/statistics/188651/united-states-direct-investments-in-italy-since-2000/#:~:text=U.S.%20annual%20FDI%20to%20Italy%202000%2D2022&text=In%202022%2C%20the%20U.S.%20investments,U.S.%20dollars%20in%20that%20year.

CONSOLATO GENERALE D'ITALIA: https://conshouston.esteri.it/it/news/dal_consolato/2023/07/limpatto-degli-investimenti-italiani-negli-usa-e-superiore-alle-rilevazioni-delle-statistiche-ufficiali/#:~:text=L'Italia%20vanta%20uno%20stock,in%20assoluto%20dopo%20la%20Germania.

Italian exports to the US was $80.5 billion (more over half of Italy's global net trade surplus comes from the United States).

3.8 The insurance and banking sectors as new strategic industries in Italian Golden Power

The "unstoppable rise" of the Italian golden powers is facilitated by Articles 15 and 16 of Decree-Law No. 23 of April 8, 2020[105] (G. Napolitano, 2019). They both expand these powers to include the banking (Swiss was the first Country interested in the safeguard of this sectors as its core business, also before the pandemic crisis) and insurance industries and stipulate that special powers in these domains apply to control acquisitions by non-EU buyers or to non-EU buyers acquiring stakes equal to or greater than 10 percent of the capital.

The goal of the framework is to shield domestic financial institutions from predatory acquisitions, which may be made easier by the existing market values, which are a reflection of the ongoing crisis, and the commonly held shares in these industries. This regulatory provision builds on the European Commission's guidance of March 26 and developments in other jurisdictions (recently: Spain, France, Australia, Germany, and the United States).

These restrictions are "anti-takeover" measures that are accompanied, as we have seen in the past (we can remember 2014 and also 2017), by a concurrent tightening of financial market transparency standards. Interestingly, Decree-Law No. 23/2020 also strengthens CONSOB's rights (as per Article 120 of the Consolidated Financial Act[106]) with relation to notifying parties of substantial shareholdings and intentions.

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[105] More details on Decree-Law No. 23 of April 8, 2020– "Urgent measures on access to credit and tax compliance for companies, special powers in strategic sectors, as well as action on health and work matters, extension of administrative and procedural judicial deadlines". See all Decree-Law (Art 15, Art 16, pages 31-34) on Assarmatori European official website, available at: https://www.assarmatori.eu/wp-content/uploads/2020/04/DecreeLaw_23_08042020_ENG.pdf

[106] More details on Art 120 of Consolidated Financial Act - "Those holding more than three percent of the capital of a listed company having Italy as home Member State [pursuant to Article. 1, paragraph 1, letter w-quater, of the Consolidated Financial Act] shall inform the participated

The aforementioned provisions address an interpretive dilemma that arose in Italy with Law No. 172/2017[107]. Specifically, they make clear that companies engaged in the credit and insurance sectors are "transitorily" (until December 31, 2020) included in the "financial infrastructures" safeguarded by golden powers, as some had dubious concerns regarding EU Regulation No. 452/2019 and Article 2-bis of Decree-Law No. 21/2012 (introduced by Decree-Law No. 105 of 2019[108]).

This legal remedy is in line with recent supervisory guidelines about the need for banks and insurance companies to hold onto profits in order to sustain national businesses during

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company and Consob," states Article 120, paragraph 2 of the Consolidated Financial Act. The criterion is five percent if the issuer is a SME [as defined by Article 1, paragraph 1, letter w-quarter.1, of the Consolidated Financial Act].". See Consob resolution on listed companies on Chiomenti document, available at: https://www.chiomenti.net/public/files/3195/Newsalert-abbassamento-soglia-art-120-tuf--COVID-19--ENG_1.pdf

[107] More details on Law No 172/2017 concerning changes on Law Decree No 148/2017 in financial matters on Gazzetta Ufficiale della Repubblica Italiana official website, available at: https://www.gazzettaufficiale.it/eli/id/2017/12/5/17G00186/sg

[108] More details on EU Regulation No. 452/2019 – "FDI screening into the Union with the opinion European Economic and Social Committee, Committee of the Regions, regarding the proposal of the European Commission", on European Union Law official website, available at: https://eur-lex.europa.eu/eli/reg/2019/452/oj

More details on Decree-Law No. 105 of 2019 – "Italy implemented an urgent cybersecurity law that included provisions. The new laws are meant to ensure that public administrations and private organizations receive the best possible level of security for their networks, information systems, and information technology (IT) services.". See more on Library of Congress official Government website, available at: https://www.loc.gov/item/global-legal-monitor/2019-10-16/italy-new-provisions-on-national-cybersecurity-enter-into-force/#:~:text=105)%20(D.L.,public%20administration%20and%20private%20entities.

the COVID-19 systemic crisis. This highlights the important role that these institutions play in the current economic climate.

The country's financial stability is further intended to be preserved by extending golden powers to the financial sectors for the acquisition of control by (i) foreign investors from the EU and (ii) non-EU buyers of stakes equal to or exceeding 10% of capital or voting rights (and later thresholds of 15, 20, 25, and 50%) with a total value of at least one million euros. This also extends to corporate resolutions that alter ownership, control, availability, or allocation of strategic assets held by companies in these sectors.

Furthermore, the 10% quantitative threshold is consistent with worldwide trends, since a comparable amount is pertinent for state screening of foreign investments in Germany, in the US, and most recently (in Spain) because of anti-coronavirus laws. Following the American experience in this area, the Government now has the authority to act ex officio with operations not previously notified in order to further defend the protected interests.

The goal of golden powers is to safeguard the public interest, which is not always the same as the interests that are, in terms of industry, protected by regulations pertaining to banking and insurance. Still, these two sets of regulations can coexist, as is the case when antitrust and financial supervisory agencies are looking into a concentration deal at the same time. Golden powers are used contingent on whether sector-specific regulation sufficiently protects the state's fundamental interests.

Furthermore, pursuant to Articles 3 and 4 of Law No. 474/1994[109] on privatizations, the recently published regulation appears to bring back, from the standpoint of safeguarding

[109] More details on Law No 474/1994 - "Conversion into law with amendments to the decree-law of 31 May 1994, n.332 containing rules for the verification of the procedures for divesting State and public bodies' shareholdings in joint-stock companies." See more details Documentazione Economica e Finanziaria (Ministero dell'Economia e delle Finanze) official website, available at: https://def.finanze.it/DocTribFrontend/getAttoNormativoDetail.do?ACTION=getSommario&id=%7B05EB2313-774E-4C77-B298-A2AE126C04AA%7D#:~:text=474%20%2D,pubblici%20in%20societa'%20per%20azioni.

fundamental public interests, the comparison between "traditional" strategic sectors (energy, transport, communications, etc.) and banking and insurance sectors.

The hope is to see governmental action that not only temporarily overcomes current adversities but also initiates structural changes conducive to the start of adequate forms of recovery for the national economy, benefiting from a proper dialogue at the European and international levels.

With the help of appropriate conversation at the European and global levels, it is hoped that government action will not only momentarily overcome present challenges but also start fundamental reforms that will facilitate the beginning of appropriate forms of recovery for the national economy[110].

[110] All data on "The insurance and banking sectors as new strategic industries in Italian Golden Power": Sacco Ginevri, article title: "Golden Powers and financial infrastructures after the Liquidity Decree", (Apr, 2020), on Editoriale Diritto Bancario official website, section financial markets, available at: https://www.dirittobancario.it/art/golden-powers-e-infrastrutture-finanziarie-dopo-il-decreto-liquidita/

3.9 Conclusion

In conclusion, the meticulous examination of Golden Power cases within Italian companies, including Microtecnica, Pirelli, and TIM, undertaken in this chapter offers profound insights into the delicate interplay between regulatory oversight and strategic asset protection. Through a granular analysis of these specific instances, we've uncovered the multifaceted nature of challenges faced by national governments in safeguarding critical industries and assets from undue external influence or control.

The investigation went beyond internal matters to examine the effects of international investments, especially those made by economic giants such as China and the United States, on the Italian environment. This more comprehensive viewpoint highlights the complex dynamics of international economic interconnectedness and the need for countries to strike a balance between maintaining their strategic autonomy and being open to foreign investment.

After this analysis, central to this discourse is the significant legislative development represented by the “Decreto Liquidità”, which marks a substantial reinforcement of Golden Power mechanisms in Italy. Notably, the extension of regulatory to other sectors (deemed as strategic as energy, communication and transport at this point) as banking and insurance sectors, which underscores the recognition of their important role in the national economy, warranting heightened protection against potential external predatory influences.

This legislative move not only demonstrates Italy's willingness to respond quickly to changing economic conditions, but it also reinforces the country's commitment to strong regulatory structures that protect national interests. Such precautions are essential for ensuring that the advantages of foreign investment are maximized while reducing related risks when negotiating the complexity of modern economic globalization.

Chapter 4: Empirical analysis on FDI inflows in WB and NMS of UE

4.1 introduction of the research

The last chapter of this thesis is focused on an empirical study conducted by the author in collaboration with the Library of the European Parliament. The data were provided by some members of the latter and requested directly from the International Monetary Fund which made its documents on FDI inflows publicly available

4.2 FDI inflows in New Member States of UE

The rapid influx of foreign direct investment into the eleven New Member States (NMS) of the EU (Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia) following their accession in 2004 is remarkable. The cumulative total of nearly 700 billion euros by 2016 underscores the attractiveness of these economies to international investors. This surge in FDI not only reflects confidence in the potential of these markets but also suggests the positive impact of EU membership in boostering economic growth and stability. The contribution of FDI to exports, employment, and productivity growth underscores its strong role in driving development across these diverse nations, although differences in outcomes across countries highlight the importance of context-specific factors in leveraging foreign investment effectively.

4.3 FDI inflows in Western Balkan of UE

The journey of the Western Balkan (WB) countries towards economic integration and growth through foreign direct investment is both significant and challenging. Despite facing a tumultuous past marked by civil unrest, ethnic conflicts, and economic instability, these nations have shown resilience in their efforts to attract FDI and enhance their export capabilities. The relatively late start in transitioning to market economies has meant that most FDI inflows occurred in recent years, highlighting the concerted policy efforts aimed at attracting foreign investors.

The contrast in FDI performance between the Western Balkans and the New Member States (NMS) underscores the different paths taken towards economic development and integration with Europe. While the average per capita FDI stock in the WB region may be lower compared to the NMS, the fact that it is higher when scaled by GDP suggests the potential impact of FDI on the relatively smaller economies in the Western Balkans. Despite facing significant challenges, these countries are making strides towards leveraging foreign investment to drive economic growth and prosperity, although with varying degrees of success across the region.

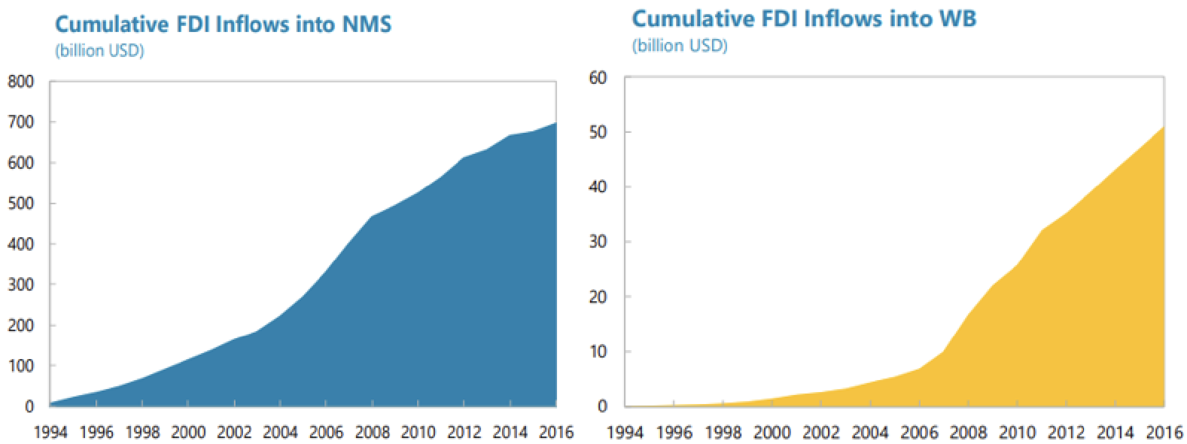

Figure 5 - Cumulative FDI inflows into NMS and WB countries - data from World Bank and UNCTAD

The Foreign Direct Investment inflows to the New Member States (NMS) and the Western Balkan (WB) region have predominantly been driven by market and efficiency-seeking motives. Early foreign investors, primarily from EU countries, were attracted by the opportunity to access and develop newly available markets, particularly in the services sectors, as well as to capitalize on wage differentials for manufacturing efficiency. Labor costs initially played an important role in attracting investors, but over time, factors such as workforce quality, productivity, and qualification gained prominence. Furthermore, EU membership and institutional factors, including legal stability and improved infrastructure through the adoption of EU regulations and strategic use of EU structural funds, have significantly enhanced the attractiveness of these regions to foreign investors. The investigations suggest that EU accession has bolstered FDI inflows to the NMS by more than 28 percentile points.

FDI in both the NMS and the WB region is primarily driven by market development, with larger economies attracting the majority of investments. In the NMS, Poland, Hungary, and the Czech Republic captured most of the FDI, with the services sector dominating, especially in financial and trade areas. Manufacturing sectors, such as automotive and chemicals, also attract significant investment.

Similarly, in the WB region, Serbia leads in FDI stock, with services sectors dominating and manufacturing playing a notable role. The product composition of FDI in both regions reflects an efficiency-seeking approach by investors, emphasizing the importance of market size and sector strengths.

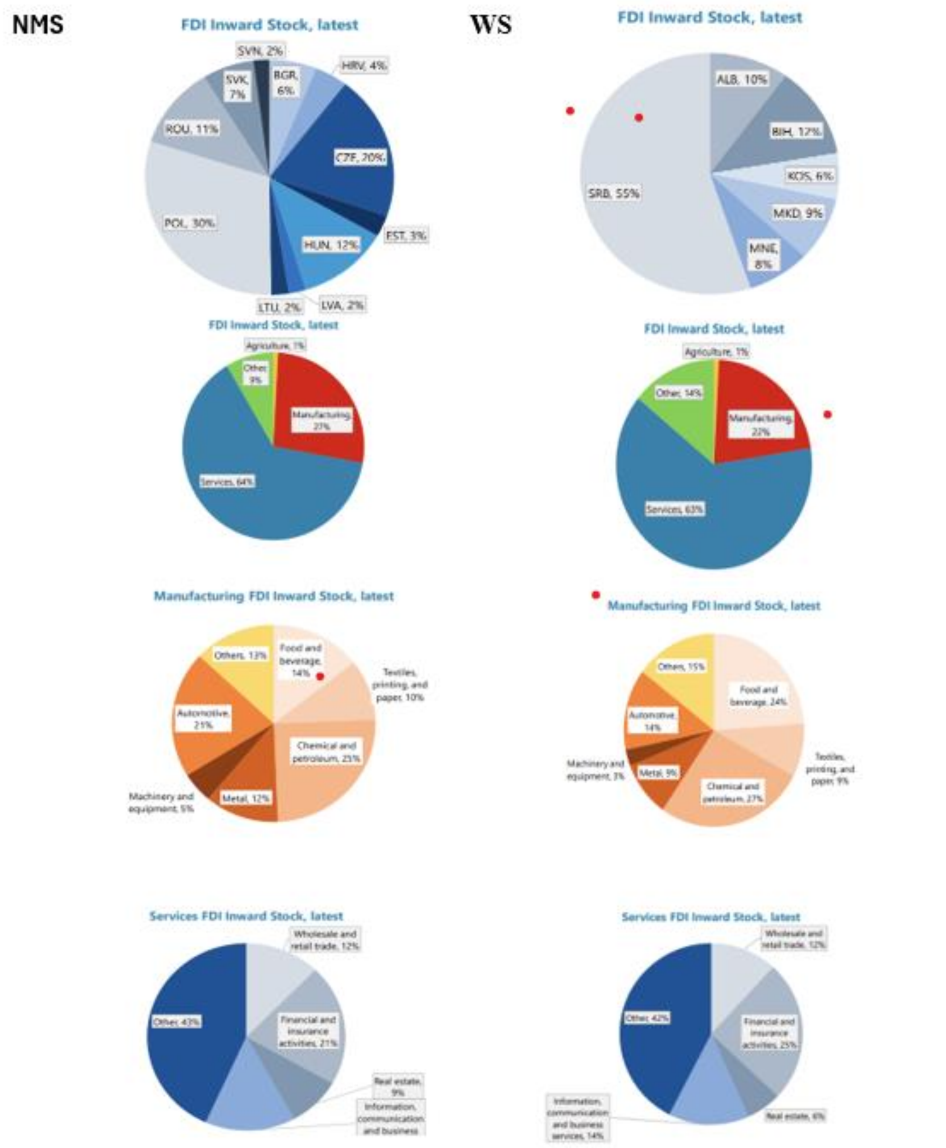

Figura 6 - NMS and WS EU countries FDI composition - WIIW database

This pattern appears to be supported by foreign investors in the WB region as well, with a significant portion of FDI coming from Italy for Albania and from Russia for Montenegro, even though Central European nations dominate the investment landscape in both FYR Macedonia and Bosnia and Herzegovina. Given the general domination of Central European nations, the importance of geographic proximity, which likely also reflects cultural and linguistic similarities, is obvious, but other variables are also significant.

4.4 FDI empirical estimation: gravity regression of bilateral FDI inflows

4.4.1 Introduction to empirical FDI landscape

FDI is often anticipated to be drawn to policies that support macroeconomic stability and are characterized by consistency and predictability. Nevertheless, studies frequently show them to be, at most, a modest driver of FDI flows, and empirical results are typically equivocal. Trade costs, tax laws, and regional integration are frequently shown to encourage foreign direct investment, especially vertical, by cost-minimizing processes, through reduced production costs and, in the case of regional integration, higher-quality institutions.

The majority of research also supports the significance of gravity variables, which include market size and the distance between the source countries and host nations.

So, it is worth to note that estimating possible increases in FDI as a result of policy interventions, has received less attention for a long time. It is critical for policy makers to distinguish between exogenous gravity variables and controllable policy variables in order to assess the possible influence that improved policies may have on foreign direct investment. Then, potential benefits are the differences between potential and actual levels of FDI, and potential FDI may be defined as expected FDI under a scenario where policy variables are at their realistic best values.

Moreover, some of these research only concentrate on institutional characteristics and ignore macroeconomic stability and competitiveness-related policy variables. In estimating the FDI potential for EU nations, we attempt to solve the inadequacies in the latter studies, in order to arrive at policy values that could reflect a more realistic economic world.

4.4.2 Panel gravity regression

As a fundamental of this study it will be used a panel gravity regression of bilateral aggregate FDI inflows from 38 source countries into 19 host countries between 2001 and 2014 (the research will consider also the EU-17 countries, including: Italy, Greece, Croatia, Netherlands, Irland, Cyprus, Malta, Portugal, Spain, Slovakia, Slovenia, Ukraine, Bulgaria, Belgium, Hungary, France, Germany and Finland).

The analysis utilizes various factors to understand the dynamics of international migration:

- Gravity factors, including population, GDP per capita, and distance between source and host countries, are employed to assess market size and physical ties;

- Production costs including skills, inputs such as tax rates, labor costs, education levels, and infrastructure investment are considered;

- Structural reforms, assessed through indices like EBRD Transition Indices about competition polices and governance practices and Worldwide Governance Indicators, are crucial for understanding the business climate and governance quality. Additionally, the study is taking into account also an Index of Economic Freedom;

- EU membership status is factored in to assess if the source and host nations are EU members through the use of a dummy variable. Evaluations of the advantages of both the accession itself and the structural changes that are implemented even after the entry are anticipated. Progress in reforms have the aim of including macroeconomic stability, competitiveness policies, and institutional quality, as well as improvements in other areas like statistics, regional policies, and foreign affairs.

It is important to underly how gravity factors play a significant role in influencing foreign direct investment inflows. Specifically, we observe that:

- Larger host and source countries tend to attract higher levels of FDI inflows, indicating a positive association between the size of countries and FDI;

- Conversely, longer distances between host and source countries are associated with lower levels of FDI inflows, suggesting that geographical proximity facilitates FDI;

- Production costs, represented by corporate tax rates and relative unit labor costs, negatively impact FDI inflows, indicating that higher costs deter foreign investment;

- Higher levels of per capita public capital stock and a greater share of vocational participants in secondary education within host countries show positive associations with FDI inflows, highlighting the importance of infrastructure and skilled labor.

However, the positive impact of the share of working-age population with at least upper secondary education is not statistically significant.

Since there is no specified logarithmic transformation for zero FDI inflows, eliminating country pairings when FDI flows are zero is not a random process and may introduce bias into sample selection. Consequently, the estimation employes Heckman's selection model to account for this bias and demonstrate that the outcomes are resilient in light of the possible selection issue.

$$FDI_{i,j,t} = \alpha \cdot G_{i,j,t} + \beta \cdot X_{i,t} + \varepsilon_{j,t}$$

In this formula, bilateral aggregate FDI inflows between source country j and host country i (in logs) are the primary outcome variable of interest (FDI i,j,t)[111]. The following explanatory variables are included in various specifications of our panel regressions to

[111] These data were sourced from the FDI database of the Vienna Institute for International Economic Studies (WIIW).

capture both structural and competitiveness characteristics (X i,t) and gravity factors (G i,j,t), based on the research that has already been published and investor questionnaires made by the International Monetary Fund.

	RATIOS ESTIMATION OF FDI DETERMINANTS					
	A	B	C	D	E	F
Sample:	**(WB vs NMS)**		**(WB - NM manifacturing)**		**NMS vs EU-17**	
Gravity variables						
Log of population (millions)	0,907***	0,952***	0,475**	0,006	0,490***	0,491***
Log of GDP per capita (PPP-USD)	0,41**	0,412***	0,677***	1,132***	1,196***	1,163***
Log of population (millions) source country	0,363***	0,535***			0,404***	0,399***
Log of GDP per capita (PPP-USD) source country	2,963***	3,604***			2,679***	2,656***
Log of distance in kilometres	-1,176	-1,490			-0,768	-0,763
Competitiveness and institunional variables						
CIT rate (Corporate Income Tax as %)	-0,11	-0,024	-0,022	-0,030	-0,004	-0,004
Unit labor cost: source country	-0,922	-0,870	-0,413	-0,321	-1,229	-1,276
15 populations with education <= upper secondary	0,002	0,002	0,015**	0,016***		
secondary vacational enrollment as %	0,11	0,239***	0,013***	0,147*		
Labor - shortage					-0,006	-0,006
Skill - shortage					-0,146	-0,149
Log of per capita public capital stock (PPP-USD)	0,012***	0,011***	0,114**	0,147*		
Host and source countries in EU	0,154*	0,152**	0,165*	0,128*		
WB Governance: Regulator quality	0,497***		0,486***		0,181*	
WB Governance: Control for corruption		0,809***		0,613**		0,169***

*Figure 7 - regression panel results are robust to other indicators of institutional quality (from the Heritage Foundation and EBRD), long-run estimates, and the two-stage fixed effects method to control for country-pair heterogeneity. *p<0.1; **p<0,5; *** p<0,01 – All negative numbers in the table are ****

The benefits of the numerous structural reforms mandated by and carried out after EU accession, as well as the trade elements of the membership, must be emphasized.

These outcomes hold up well when compared to several institutional quality metrics from various sources. In this way, it is easy to note that higher levels of foreign direct investment are linked to certain improvements in governance, institutional and regulatory quality, and business flexibility.

Although there is a positive association between these variables and EU membership after specifically adjusting for these reform factors, the coefficient estimates on the EU membership variable remain statistically significant and substantially positive. This emphasizes the value of structural changes both before and after admission, as well as the contribution of additional concrete and intangible advantages of EU membership, including the absence of external tariffs and other policies not covered by the variables included, to drawing foreign direct investment.

The research conducted at the sectoral level reveals that policy factors are crucial in drawing foreign direct investment inflows, especially in the manufacturing sector. FDI regressions are conducted independently for the three primary sectors, agriculture, manufacturing, and services, to see if policy impacts vary by sector.

The manufacturing sector sub-sample yielded strong results, emphasizing the importance of competitive labor markets, taxation policies, public capital stock, EU membership, and high-quality institutions in drawing foreign direct investment. For each of the three major industries, there is a statistically significant positive association between foreign direct investment and the caliber of institutions. Moreover, FDI in agriculture is not much influenced by a trained labor force, while for the service and agricultural subsectors, there is no statistically significant correlation between FDI inflows and tax rates.

Therefore, all EU nations (both NMS and EU-17) are included as FDI host countries in the NMS-EU focused regressions. The skill shortage and skill mismatch indices[112] have taken the position of proxies for skills in the bilateral regressions for the Western Balkans, since skill and labor shortages have emerged as a serious issue among some of the NMS.

While still statistically significant, the contributions of tax incentives and other institutional quality-related structural improvements on FDI attraction are less than those shown in the sample of the Western Balkans. In the meanwhile, FDI is more positively

[112] IMF Country Report No. 18/242, Selected Issues Paper on Skill Mismatch and Productivity is the source of the labor shortage and skill indices (Stepanyan, 2018). The aggregate skills shortage indicator, as per Estevío and Tsounta (2011), shows if there are differences in the percentage of employed workforce without postsecondary education and the percentage of postsecondary educated workers. The index is further adjusted for educational quality since variations in educational quality over time and between nations may have an impact on the supply of skilled labor (for further information, see to IMF Country Report No. 18/242).

impacted by public infrastructure and workforce competitiveness in EU nations. These outcomes may be explained by comparatively greater variances in infrastructure and labor competitiveness and less disparities in tax and institutional quality within the EU. There is a negative association between FDI inflows and labor and skill shortages, with a stronger negative correlation for skill shortages.

Closing gaps in institutional quality, skills shortages, and public investment could be the primary means of achieving potential FDI advantages in the NMS. Potential gains in FDI inflows are assessed for the NMS by comparing their statistically significant structural and competitiveness factors to those of the top EU-17 performance, in a manner similar to the computations for the WB nations. Improving public infrastructure, closing the skills gap, and raising institutional quality to the level of the top EU-17 performance might result in partial FDI benefits that, on average, could be between 5 and 7 percent of GDP (Figure 10). Because of the great diversity that NMS nations experience, the benefits of solving talent shortages are the vastest.

4.4.3 How inefficiency in bureaucracy and corruption is affecting Italy and other EU countries FDI inflows

In this analysis there will be taken into account two categories of metrics to assess the theories' applicability in the selected environment. The first kind uses data from a global survey that a World Bank team performed, concerning a scale of zero for "not a problem" to five for "very important issue" (it was used to ask 102 managers to assess the barriers to conducting business). We concentrate on the three indicators that are most important to developed nations:

1. Unpredictability of laws and regulations;
2. Unpredictability of politics and property[113];
3. Inefficiency of bureaucracy indicator.

[113] An OECD team's survey is the source of the second indicator concerning Unpredictability of politics and property;

Country	Indicators			
	Employment protection legislation	Unpredictability of law and policies	Political instability and insecurity of property	Bureaucratic inefficiency
Germany	3.6	3.32	1.85	2.29
Spain	3.6	3.47	1.71	2.48
France	2.7	3.57	3.44	2.13
Ireland	1.0	3.06	2.20	2.44
Italy	4.2	4.07	2.19	3.19
Portugal	4.2	3.79	2.68	2.91
The UK	0.5	3.52	2.40	2.35
The USA	0.2	3.27	2.79	2.77
Canada	0.6	3.38	2.11	2.30
Min	0.2	3.06	1.71	2.13
Max	4.2	4.07	3.44	3.19
Average	2.3	3.49	2.37	2.54

Figure 8 - Indicators of unpredictability of business environment by country – source World Bank and OECD database

Italy seems to have the lowest ratings in three of the four categories, out of the two nations that have not profited from foreign direct investment. It is possible that the limited rise in foreign direct investment inflows to Italy following 1987 might be attributed to the efficiency of State institutions.

Germany and Spain register near-top ratings in every metric, with the exception of employment protection (Germany has one of the highest employment protection ratings in the sample, suggesting that its laws are more stringent than those of other nations).

Another important factor that we have already analyzed in the past chapters is the location choices of multinational firms which are investing in EU region companies and have found that the profits foreign firms extract from their investments in Italian regions are positively correlated with the location indicator

Government officials' corrupt behavior is an unofficial institution that can develop when the institutions of a market economy are undeveloped, leading to high transaction fees that raise the MNE's operating expenses in the host nation. These additional expenses reduce the projected return on a multinational enterprise's direct investment and can discourage international investors from beginning production in the host nation.

Since regional variations in capital and labor taxes are seen under European Community regulations as a distortion of competition, fiscal (tax) policies do not typically contain a regional component in most European nations (national plans must include tax policies as well).

The impact of corruption might differ depending on the nature of the investment flows, an analogous result can be trigger from a bureaucracy that is ineffective. In actuality, protracted and careless bureaucratic procedures raise the cost of doing business and make the nation less appealing to overseas investors.

4.4.4 How this research has impacted on some Italian region FDI inflows

In Italy, during the past several decades, a process of growing stratification of competencies at various geographical levels has emerged as a result of the interplay of events like:

- the fortification of European integration;
- the reallocation of powers between federalist-leaning State and local agencies;
- the reinforcement of functions at all levels, starting with the executive branch through direct elections or the formation of coalitions among first ministers, regional governors, province presidents, and mayors.

This analysis will take into account four Italian regions: Lombardy in the northern part, Campania situated in the south, Sardinia and Tuscany in the middle.

	LOMBARDY	TUSCANY	CAMPANIA	SARDINIA	ITALY
Population	9.319,9	3.582,2	5.774,7	1.646,6	58.175,3
Housing density (inhab/km^2)	397,0	155,0	419,4	69,0	193,0
Unemploymen t Rate	3,7	5,3	15,5	13,6	7,9
GDP per capita	31.004,0	26.049,3	15.446,2	19.367,5	23.873,9

Figure 9 - 4 Italian regions rates analysis - source ISTAT

The examined regions exhibit a wide range of traits. Being the most populated and having the greatest GDP per capita among the Italian regions, Lombardy is the engine of the economy of Northern Italy. In contrast, Campania, the southern region with the highest population areas, has four times the unemployment rate of Lombardy and a GDP per capita level that is precisely half of that region.

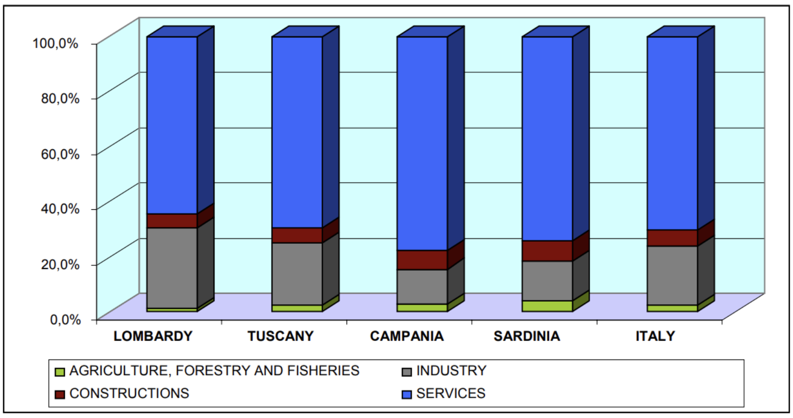

Figure 10 - Italian regions added value per sector of business activities – source ISTAT

The figure 10 is creating a background for the industries affecting Italian economy in the analyzed regions. So, Lombardy followed by Tuscany keep the leadership in the industry area, while Campania and Sardinia established their core business in service and agriculture sectors (the constructions are mostly equitable in all regions, with a major added value in Sardinia).

Total				
	01/01/2001	01/01/2005	Var.%	Var.% Italy
Enterprises with a foreign participation	108	118	9,3%	7,4%
Employees in enterprises with foreign participation	14143	14152	0,1%	0,8%
Turnover of the shared enterprises (Millions of Euro)	4330	4139	-4,4%	14,5%
Control Participation				
	01/01/2001	01/01/2005	Var.%	Var.% Italy
Enterprises with a foreign participation	87	100	14,9%	7,6%
Employees in enterprises with foreign participation	9806	10044	2,4%	4,3%
Turnover of the shared enterprises (Millions of Euro)	2551	2682	5,1%	16,5%
Equal or minority participations				
	01/01/2001	01/01/2005	Var.%	Var.% Italy
Enterprises with a foreign participation	21	18	-14,3%	4,9%
Employees in enterprises with foreign participation	4337	4108	-5,3%	-17,2%
Turnover of the shared enterprises (Millions of Euro)	1779	1457	-18,1%	3,4%

Figure 11 - Campania FDI inflows data - Polytechnic of Milan – source ICE

It sounds like there's an intriguing dynamic at play in Campania's business landscape. The increase in foreign capital enterprises suggests a growing interest from international investors, yet the discrepancy with the decrease in employee turnover raises questions about the nature of these investments and their impact on the local workforce. Additionally, the shift towards control participations over equal or minority ones, particularly pronounced in Campania, signals a noteworthy change in ownership structures, possibly indicating a shift in power dynamics within the region's business ecosystem.

Total				
	01/01/2001	01/01/2005	Var.%	Var.% Italy
Enterprises with a foreign participation	3.539	3.719	5,1%	7,4%
Employees in enterprises with foreign participation	416.880	427.498	2,5%	0,8%
Turnover of the shared enterprises (Millions of Euro)	158.926	176.945	11,3%	14,5%
Control Participation				
	01/01/2001	01/01/2005	Var.%	Var.% Italy
Enterprises with a foreign participation	3.346	3.514	5,0%	7,6%
Employees in enterprises with foreign participation	386.885	395.052	2,1%	4,3%
Turnover of the shared enterprises (Millions of Euro)	149.871	164.040	9,5%	16,5%
Equal or minority participations				
	01/01/2001	01/01/2005	Var.%	Var.% Italy
Enterprises with a foreign participation	193	205	6,2%	4,9%
Employees in enterprises with foreign participation	29.995	32.446	8,2%	-17,2%
Turnover of the shared enterprises (Millions of Euro)	9.055	12.905	42,5%	3,4%

Figure 12 - - Lombardy FDI inflows data - Polytechnic of Milan – source ICE

Lombardy emerges as a powerhouse within Italy's economic framework, consistently outperforming on key metrics such as the number of enterprises, employees, and turnover, each surpassing the national average by a significant margin. This dominance aligns Lombardy's trajectory closely with that of the entire country, indicating its central role in driving Italy's economic engine. However, the notable exception lies in the realm of equal or minority participations, where Lombardy displays a unique pattern of development compared to the national trend. This anomaly suggests a distinctive approach to ownership structures or investment strategies within Lombardy, shedding light on the region's distinct economic landscape amidst its broader alignment with national dynamics.

Total				
	01/01/2001	01/01/2005	Var.%	Var.% Italy
Enterprises with a foreign participation	289	308	6,6%	7,4%
Employees in enterprises with foreign participation	30.837	28.583	-7,3%	0,8%
Turnover of the shared enterprises (Millions of Euro)	10.624	10.881	2,4%	14,5%
Control Participation				
	01/01/2001	01/01/2005	Var.%	Var.% Italy
Enterprises with a foreign participation	249	269	8,0%	7,6%
Employees in enterprises with foreign participation	28.972	26.261	-9,4%	4,3%
Turnover of the shared enterprises (Millions of Euro)	10.219	10.319	1,0%	16,5%
Equal or minority participations				
	01/01/2001	01/01/2005	Var.%	Var.% Italy
Enterprises with a foreign participation	40	39	-2,5%	4,9%
Employees in enterprises with foreign participation	1865	2322	24,5%	-17,2%
Turnover of the shared enterprises (Millions of Euro)	405	562	38,8%	3,4%

Figure13 - Tuscany FDI inflows data - Polytechnic of Milan – source ICE

When compared to the national statistics, Tuscany's gain in the variables over the previous four years was less significant; the number of employees is actually declining in absolute value. Regarding employees and attrition, it is noted that overall, there was a definite displacement in favor of the equal or minority participations as compared to the control ones.

Total				
	01/01/2001	01/01/2005	Var.%	Var.% Italy
Enterprises with a foreign participation	30	36	20,0%	7,4%
Employees in enterprises with foreign participation	4.343	6.763	55,7%	0,8%
Turnover of the shared enterprises (Millions of Euro)	1.360	2.271	67,0%	14,5%
Control Participation				
	01/01/2001	01/01/2005	Var.%	Var.% Italy
Enterprises with a foreign participation	27	33	22,2%	7,6%
Employees in enterprises with foreign participation	4.112	6.540	59,0%	4,3%
Turnover of the shared enterprises (Millions of Euro)	1.189	1.749	47,1%	16,5%
Equal or minority participations				
	01/01/2001	01/01/2005	Var.%	Var.% Italy
Enterprises with a foreign participation	3	3	0,0%	4,9%
Employees in enterprises with foreign participation	231	223	-3,5%	-17,2%
Turnover of the shared enterprises (Millions of Euro)	171	522	205,3%	3,4%

Figure 14 - Sardinia FDI inflows data - Polytechnic of Milan – source ICE

Sardinia's substantial increases in enterprises, employees, and turnover, well above national averages, suggest a catching-up stage for the region's economy. This rapid growth indicates a promising trajectory, likely fueled by strategic investments and emerging industries. Sardinia's economic resurgence highlights the importance of targeted policies to sustain its momentum and foster continued development[114].

4.5 Conclusion of the research

In conclusion, this analysis underscores the fundamental importance of Foreign Direct Investment in the contemporary economic landscape, particularly in shaping and fortifying sectors deemed strategic for our national economy. In today's globalized world, characterized by intricate networks of trade, finance, and technology exchange, the notion of sectors that are not strategic is increasingly untenable. Every sector, whether traditional or emerging, plays a vital role in the interconnected web of our economic ecosystem.

This dynamic structure relies heavily on foreign direct investment to support strategic sectors by providing them with cash, knowledge, and technical innovations that boost their resilience and competitiveness. Foreign capital inflows stimulate innovation and productivity growth, which propel overall economic development, in addition to facilitating the modernization and expansion of strategic sectors.

Furthermore, the strategic significance of sectors may change over time due to a variety of circumstances, including changes in consumer preferences, geopolitical changes, and technological disruptive innovations (like AI phenomenon that will influence the global economy). Things that were deemed non-strategic in the past could turn out to be crucial in future, highlighting the necessity of constant adaptability and strategic planning.

So, optimizing the advantages of foreign investment while reducing related risks requires creating an environment that is conducive to FDI, which is defined by clear rules, strong infrastructure, and a trained workforce.

[114] All data used in paragraph 4.4.4 on Presidenza del Consiglio dei Ministri document "Foreign Direct Investment in Italy: what are the causes of the current low levels", dated 30 Jan 2008, by Dipartimento della Funzione Pubblica e Laboratorio di Regolazione, Pubblica Amministrazione e Sviluppo socio-economico in Europa RePALab direction.

As emerged from the studies carried out in the previous chapters, each country produces FDI inflows by correlating some gravity factors, quantifiable thanks to a logarithmic regression analysis, with the aim of understanding which are the variables that are influencing FDI in our economy and in the global one .

Finally, thanks to the data obtained from the questionnaires and interviews, it emerged how factors such as bureaucratic inefficiency and corruption can reduce FDI flows in the accounts of the States. In conclusion, another important phenomenon is concerning how the territorial division into regions of a country, such as Italy, can lead to the formation of autonomous entities which, through different activities and different sectors, are competing with the aim of producing greater wealth for their citizens and of becoming the territorial entity with a better quality of life by exploiting the regulations previously analyzed to attract more and more capital from abroad.

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Appendix:

1. data used for Figure 1 graph on World Bank Excel document, available at: https://data.worldbank.org/indicator/BX.KLT.DINV.WD.GD.ZS

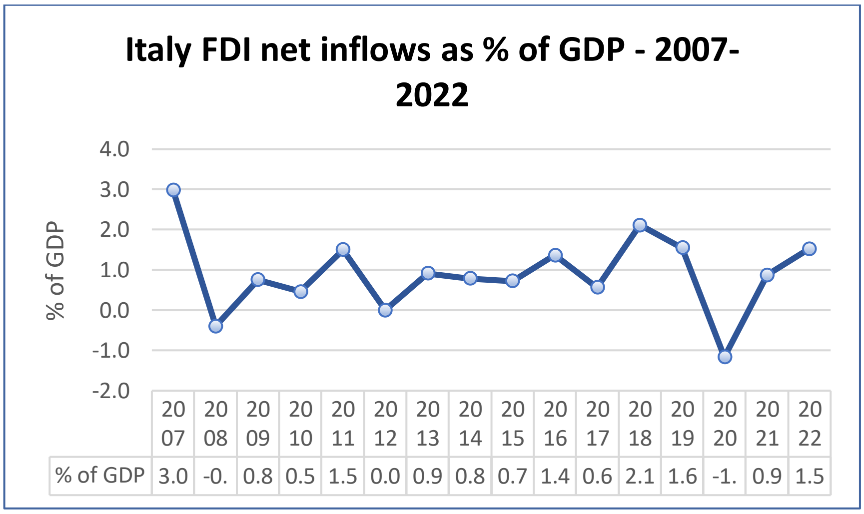

Figure 1 - Italy FDI net inflows as % of GDP (2007-2022)- Data from World Bank website

2. data used for Figure 2 graph on World Bank Excel document, available at: https://data.worldbank.org/indicator/BM.KLT.DINV.WD.GD.ZS?locations=IT

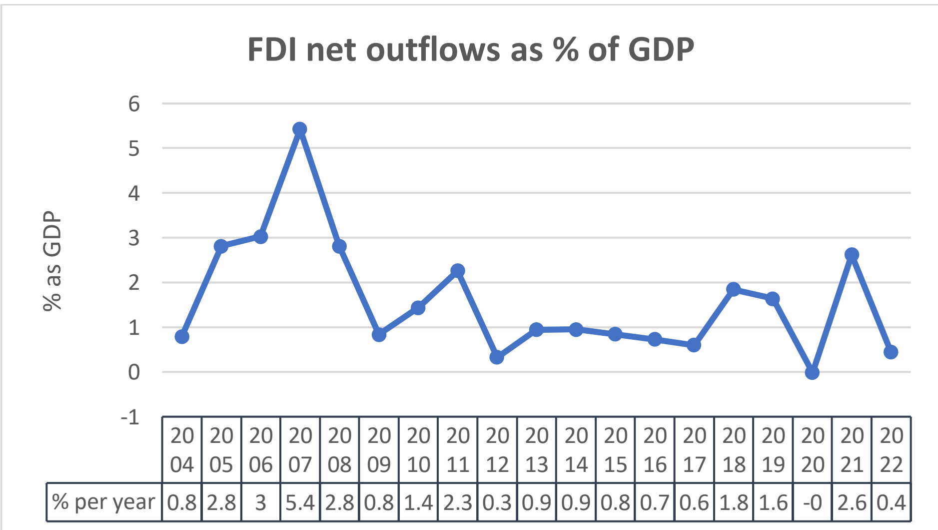

Figure 2 - Italy FDI net outflows as % of GDP (2007-2022)- Data from World Bank website

3. data used for Figure 3 graph on World Bank Excel document, available at: https://data.worldbank.org/indicator/SL.UEM.TOTL.ZS?locations=IT

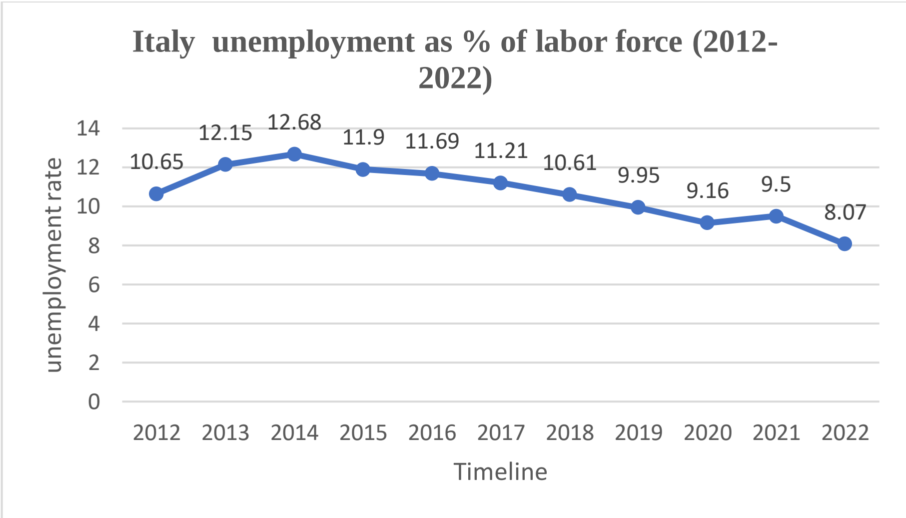

Figure 3 - Italy unemployment as % of labor force (2012-2022)- Data from World Bank website

4. data used for Figure 6 - U.S. FDI position in Italy (2012-2022) available on Statista and Consolato Generale d'Italia official website, availablr at:

STATISTA:
https://www.statista.com/statistics/188651/united-states-direct-investments-in-italy-since-2000/#:~:text=U.S.%20annual%20FDI%20to%20Italy%202000%2D2022&text=In%202022%2C%20the%20U.S.%20investments,U.S.%20dollars%20in%20that%20year.

CONSOLATO GENERALE D'ITALIA:
https://conshouston.esteri.it/it/news/dal_consolato/2023/07/limpatto-degli-investimenti-italiani-negli-usa-e-superiore-alle-rilevazioni-delle-statistiche-ufficiali/#:~:text=L'Italia%20vanta%20uno%20stock,in%20assoluto%20dopo%20la%20Germania.

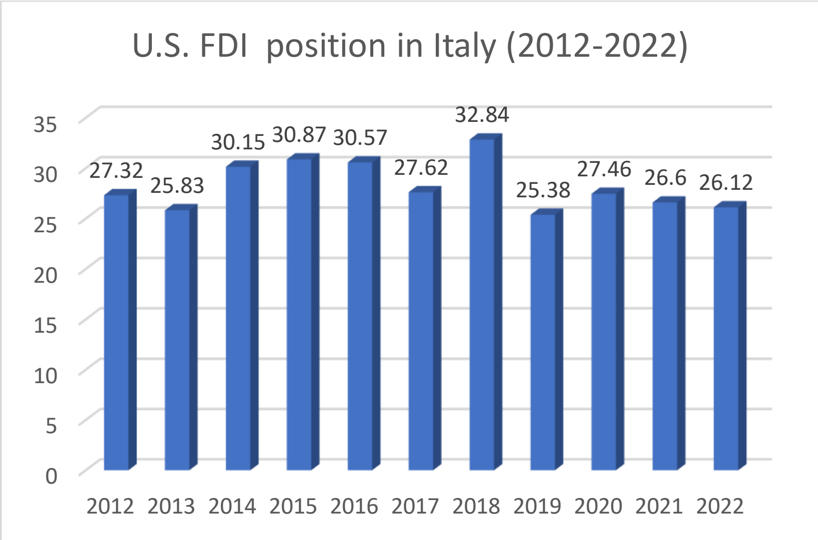

Figure 4 - U.S. FDI position in Italy (2012-2022). – Data from Statista and Consolato Generale d'Italia a Houston

5. data used for Figure 5 graph on World Bank Excel document provided by IMF document named "The Regional Impact of Bilateral Investment Treaties on Foreign Direct Investment", by La-Bhus Fah Jirasavetakul and Jesmin Rahman (Aug, 2018), and by Library of the European Parliament, document named " ", by Arjan Lejour and Maria Salfi (Jan ,2015)

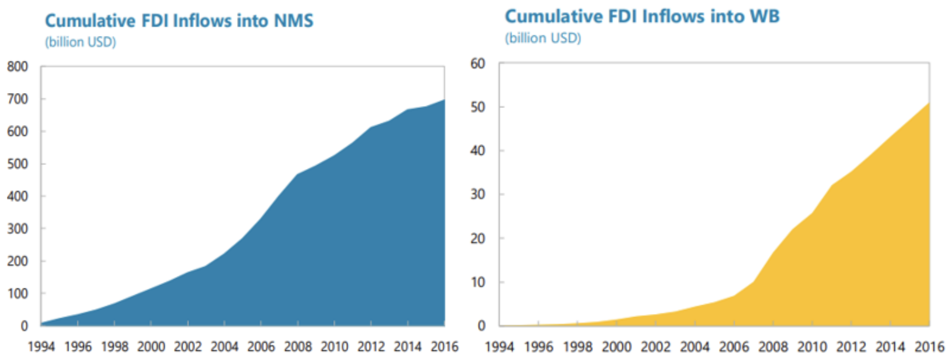

Figura 5 - Figure 5 - Cumulative FDI inflows into NMS and WB countries - data from World Bank and UNCTAD

6. data used for Figure 6 graph on WIIW document provided by IMF document named "The Regional Impact of Bilateral Investment Treaties on Foreign Direct Investment", by La-Bhus Fah Jirasavetakul and Jesmin Rahman (Aug, 2018)

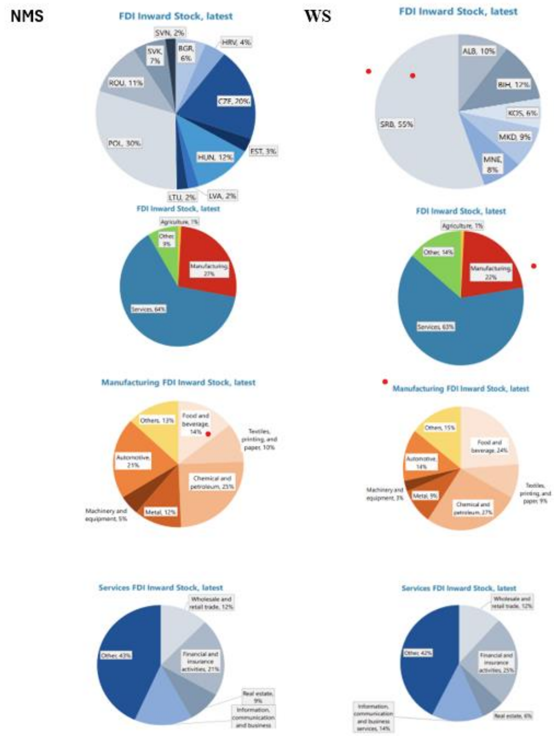

Figura 6 - NMS and WS EU countries FDI composition - WIIW database

7. data used for Figure 7 excel graph on Heritage Foundation and EBRD document provided by IMF document named "The Regional Impact of Bilateral Investment Treaties on Foreign Direct Investment", by La-Bhus Fah Jirasavetakul and Jesmin Rahman (Aug, 2018). IMF Country Report No. 18/242, Selected Issues Paper on Skill Mismatch and Productivity is the source of the labor shortage and skill indices (Stepanyan, 2018). The aggregate skills shortage indicator, as per Estevío and Tsounta (2011), shows if there are differences in the percentage of employed workforce without postsecondary education and the percentage of postsecondary educated workers. The index is further adjusted for educational quality since variations in educational quality over time and between nations may have an impact on the supply of skilled labor (for further information, see to IMF Country Report No. 18/242).

	RATIOS ESTIMATION OF FDI DETERMINANTS					
	A	B	C	D	E	F
Sample:	**(WB vs**	**NMS)**	**(WB - NM**	**manifacturing)**	**NMS vs**	**EU-17**
Gravity variables						
Log of population (millions)	0,907***	0,952***	0,475**	0,006	0,490***	0,491***
Log of GDP per capita (PPP-USD)	0,41**	0,412***	0,677***	1,132***	1,196***	1,163***
Log of population (millions) source country	0,363***	0,535***			0,404***	0,399***
Log of GDP per capita (PPP-USD) source country	2,963***	3,604***			2,679***	2,656***
Log of distance in kilometres	-1,176	-1,490			-0,768	-0,763
Competitiveness and institunional variables						
CIT rate (Corporate Income Tax as %)	-0,11	-0,024	-0,022	-0,030	-0,004	-0,004
Unit labor cost: source country	-0,922	-0,870	-0,413	-0,321	-1,229	-1,276
15 populations with education <= upper secondary	0,002	0,002	0,015**	0,016***		
secondary vacational enrollment as %	0,11	0,239***	0,013***	0,147*		
Labor - shortage					-0,006	-0,006
Skill - shortage					-0,146	-0,149
Log of per capita public capital stock (PPP-USD)	0,012***	0,011***	0,114**	0,147*		
Host and source countries in EU	0,154*	0,152**	0,165*	0,128*		
WB Governance: Regulator quality	0,497***		0,486***		0,181*	
WB Governance: Control for corruption		0,809***		0,613**		0,169***

*Figure 7 - regression panel results are robust to other indicators of institutional quality (from the Heritage Foundation and EBRD), long-run estimates, and the two-stage fixed effects method to control for country-pair heterogeneity. *p<0.1; **p<0,5*

8. data used for table 8 graph on World Bank and OECD database provided by Presidenza del Consiglio dei Ministri document named “Foreign Direct Investment in Italy: What are the causes of the current low levels?”, by Dipartimento della Funzione Pubblica e Laboratorio di Regolazione, Pubblica Amministrazione e Sviluppo socio-economico in Europa RePALab direction, (Jan, 2008)

Country	Indicators			
	Employment protection legislation	Unpredictability of law and policies	Political instability and insecurity of property	Bureaucratic inefficiency
Germany	3.6	3.32	1.85	2.29
Spain	3.6	3.47	1.71	2.48
France	2.7	3.57	3.44	2.13
Ireland	1.0	3.06	2.20	2.44
Italy	4.2	4.07	2.19	3.19
Portugal	4.2	3.79	2.68	2.91
The UK	0.5	3.52	2.40	2.35
The USA	0.2	3.27	2.79	2.77
Canada	0.6	3.38	2.11	2.30
Min	0.2	3.06	1.71	2.13
Max	4.2	4.07	3.44	3.19
Average	2.3	3.49	2.37	2.54

Figure 8 - Indicators of unpredictability of business environment by country – source World Bank and OECD database

9. data used for table 9 graph on World Bank and OECD database provided by Presidenza del Consiglio dei Ministri document named "Foreign Direct Investment in Italy: What are the causes of the current low levels?", by Dipartimento della Funzione Pubblica e Laboratorio di Regolazione, Pubblica Amministrazione e Sviluppo socio-economico in Europa RePALab direction, (Jan, 2008)

	LOMBARDY	TUSCANY	CAMPANIA	SARDINIA	ITALY
Population	9.319,9	3.582,2	5.774,7	1.646,6	58.175,3
Housing density (inhab/km^2)	397,0	155,0	419,4	69,0	193,0
Unemploymen t Rate	3,7	5,3	15,5	13,6	7,9
GDP per capita	31.004,0	26.049,3	15.446,2	19.367,5	23.873,9

Figure 9 - 4 Italian regions rates analysis - source ISTAT

10. data used for table 10 graph on World Bank and OECD database provided by Presidenza del Consiglio dei Ministri document named "Foreign Direct Investment in Italy: What are the causes of the current low levels?", by Dipartimento della Funzione Pubblica e Laboratorio di Regolazione, Pubblica Amministrazione e Sviluppo socio-economico in Europa RePALab direction, (Jan, 2008)

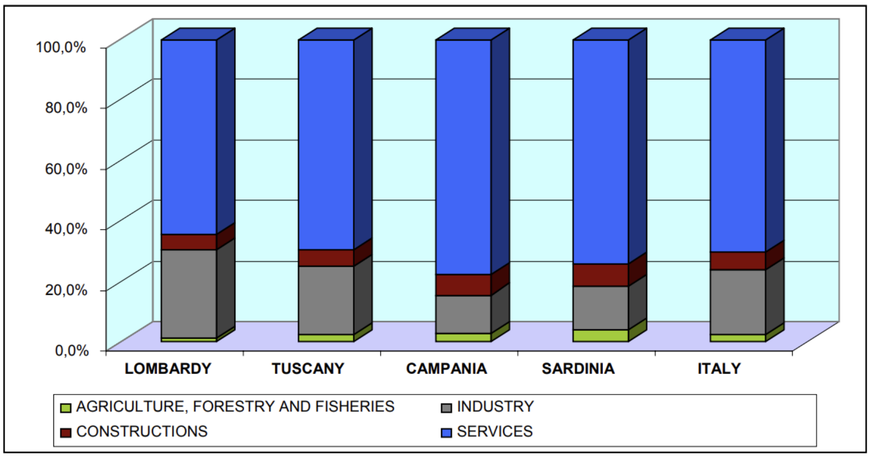

Figure 10 - Italian regions added value per sector of business activities – source ISTAT

11. data used for table 11 graph on World Bank and OECD database provided by Presidenza del Consiglio dei Ministri document named “Foreign Direct Investment in Italy: What are the causes of the current low levels?”, by Dipartimento della Funzione Pubblica e Laboratorio di Regolazione, Pubblica Amministrazione e Sviluppo socio-economico in Europa RePALab direction, (Jan, 2008)

Total				
	01/01/2001	01/01/2005	Var.%	Var.% Italy
Enterprises with a foreign participation	108	118	9,3%	7,4%
Employees in enterprises with foreign participation	14143	14152	0,1%	0,8%
Turnover of the shared enterprises (Millions of Euro)	4330	4139	-4,4%	14,5%
Control Participation				
	01/01/2001	01/01/2005	Var.%	Var.% Italy
Enterprises with a foreign participation	87	100	14,9%	7,6%
Employees in enterprises with foreign participation	9806	10044	2,4%	4,3%
Turnover of the shared enterprises (Millions of Euro)	2551	2682	5,1%	16,5%
Equal or minority participations				
	01/01/2001	01/01/2005	Var.%	Var.% Italy
Enterprises with a foreign participation	21	18	-14,3%	4,9%
Employees in enterprises with foreign participation	4337	4108	-5,3%	-17,2%
Turnover of the shared enterprises (Millions of Euro)	1779	1457	-18,1%	3,4%

Figure 11 - Campania FDI inflows data - Polytechnic of Milan – source ICE

12. data used for table 12 graph on World Bank and OECD database provided by Presidenza del Consiglio dei Ministri document named “Foreign Direct Investment in Italy: What are the causes of the current low levels?”, by Dipartimento della Funzione Pubblica e Laboratorio di Regolazione, Pubblica Amministrazione e Sviluppo socio-economico in Europa RePALab direction, (Jan, 2008)

Total				
	01/01/2001	01/01/2005	Var.%	Var.% Italy
Enterprises with a foreign participation	3.539	3.719	5,1%	7,4%
Employees in enterprises with foreign participation	416.880	427.498	2,5%	0,8%
Turnover of the shared enterprises (Millions of Euro)	158.926	176.945	11,3%	14,5%
Control Participation				
	01/01/2001	01/01/2005	Var.%	Var.% Italy
Enterprises with a foreign participation	3.346	3.514	5,0%	7,6%
Employees in enterprises with foreign participation	386.885	395.052	2,1%	4,3%
Turnover of the shared enterprises (Millions of Euro)	149.871	164.040	9,5%	16,5%
Equal or minority participations				
	01/01/2001	01/01/2005	Var.%	Var.% Italy
Enterprises with a foreign participation	193	205	6,2%	4,9%
Employees in enterprises with foreign participation	29.995	32.446	8,2%	-17,2%
Turnover of the shared enterprises (Millions of Euro)	9.055	12.905	42,5%	3,4%

Figure 12 - - Lombardy FDI inflows data - Polytechnic of Milan – source ICE

13. data used for table 13 graph on World Bank and OECD database provided by Presidenza del Consiglio dei Ministri document named “Foreign Direct Investment in Italy: What are the causes of the current low levels?”, by Dipartimento della Funzione Pubblica e Laboratorio di Regolazione, Pubblica Amministrazione e Sviluppo socio-economico in Europa RePALab direction, (Jan, 2008)

Total				
	01/01/2001	01/01/2005	Var.%	Var.% Italy
Enterprises with a foreign participation	289	308	6,6%	7,4%
Employees in enterprises with foreign participation	30.837	28.583	-7,3%	0,8%
Turnover of the shared enterprises (Millions of Euro)	10.624	10.881	2,4%	14,5%
Control Participation				
	01/01/2001	01/01/2005	Var.%	Var.% Italy
Enterprises with a foreign participation	249	269	8,0%	7,6%
Employees in enterprises with foreign participation	28.972	26.261	-9,4%	4,3%
Turnover of the shared enterprises (Millions of Euro)	10.219	10.319	1,0%	16,5%
Equal or minority participations				
	01/01/2001	01/01/2005	Var.%	Var.% Italy
Enterprises with a foreign participation	40	39	-2,5%	4,9%
Employees in enterprises with foreign participation	1865	2322	24,5%	-17,2%
Turnover of the shared enterprises (Millions of Euro)	405	562	38,8%	3,4%

Figure13 - Tuscany FDI inflows data - Polytechnic of Milan – source ICE

14. data used for table 14 graph on World Bank and OECD database provided by Presidenza del Consiglio dei Ministri document named "Foreign Direct Investment in Italy: What are the causes of the current low levels?", by Dipartimento della Funzione Pubblica e Laboratorio di Regolazione, Pubblica Amministrazione e Sviluppo socio-economico in Europa RePALab direction, (Jan, 2008)

Total				
	01/01/2001	01/01/2005	Var.%	Var.% Italy
Enterprises with a foreign participation	30	36	20,0%	7,4%
Employees in enterprises with foreign participation	4.343	6.763	55,7%	0,8%
Turnover of the shared enterprises (Millions of Euro)	1.360	2.271	67,0%	14,5%
Control Participation				
	01/01/2001	01/01/2005	Var.%	Var.% Italy
Enterprises with a foreign participation	27	33	22,2%	7,6%
Employees in enterprises with foreign participation	4.112	6.540	59,0%	4,3%
Turnover of the shared enterprises (Millions of Euro)	1.189	1.749	47,1%	16,5%
Equal or minority participations				
	01/01/2001	01/01/2005	Var.%	Var.% Italy
Enterprises with a foreign participation	3	3	0,0%	4,9%
Employees in enterprises with foreign participation	231	223	-3,5%	-17,2%
Turnover of the shared enterprises (Millions of Euro)	171	522	205,3%	3,4%

Figure 14 - Sardinia FDI inflows data - Polytechnic of Milan – source ICE