

Newsalert

Corporate - M&A and Administrative Law Departments

The report to the Parliament on the exercise by the Government of the special powers (so-called *golden powers*) during the year 2019 has been published

On October 28, 2020, the 2019 "Report on the activity carried out on the basis of the special powers over companies operating in the sectors of defense and national security, as well as for the activities of strategic relevance in the sectors of energy, transports and communications" has been published on the Presidency of the Council of Ministers' website (the "Report").

In particular, pursuant to article 3-*bis* of Law Decree no. 21 of March 15, 2012, converted with Law no. 56 of May 11, 2012 (the "Decree") - which contains the regulation concerning the exercise of the special powers granted to the Italian Government over companies operating in the sectors of defense and national security, 5G technology, energy, transports and communications - the President of the Council of Ministers shall transmit to the Chambers a report on the activity carried out on the basis of the powers provided by the Decree, with particular reference to the specific cases and the public interests that justified the exercise of such powers.

More specifically, the Report - which refers to the period between January 1, 2019 and December 31, 2019 - is divided into six parts, and namely:

- Part 1, which illustrates the amendments that occurred during 2019 in the regulation on the special powers, also taking into account the amendments introduced by Regulation EU no. 452/2019 of March 19, 2019;
- Part 2, which contains a description of the notifications received during the reporting period, in line with what was done in previous reports ⁽¹⁾, focusing on the specific types of interventions, the description of the contents of the transactions notified, as well as the distinction between them by type and outcome;

⁽¹⁾ Reference is made to the reports for the period October 3, 2014 - June 30, 2016 and July 1, 2016 - December 31, 2018, respectively, available here.

- Part 3, which is dedicated to the monitoring Committees, and namely the inter-ministerial groups established with special Decrees of the President of the Council of Ministers in order to analyze the reports by means of which the companies to which golden powers provisions have been addressed communicate, in compliance with such provisions, the measures adopted in order to comply with them;
- Parts 4 and 5, which provide a summary of the notifications received by the Presidency of the Council of Ministers in the year 2019 through *ad hoc* tables which illustrate the distribution of notifications between the various sectors of intervention and summarize the relevant outcomes;
- Part 6, which, in conclusion, graphically illustrates the breakdown of the notifications mentioned in the Report, their percentage incidence and the relationship between such notifications and those described in previous reports.

It is understood that the Report - referring to the year 2019 - does not take into account the relevant amendments to the Italian regulation on golden powers introduced in the context of the Covid-19 related health emergency by Legislative Decree no. 23 of April 8, 2020 (the so-called "liquidity" decree) - converted, with amendments, into Law no. 40 of June 5, 2020 - which are summarized in the Newsletter published by Chiomenti on 9 April 2020 and available here.

The data contained in the Report with regard to the activity carried out by the Italian Government on golden powers highlight the exponential increase in the number of notifications received by the Presidency of the Council of Ministers in the reporting period, confirming the increasing trend already recorded in the years prior to 2019.

Such increase seems to be due, on the one hand, to the introduction of the new regulation on the special powers relating to electronic broadband telecommunications networks with 5G technology ⁽²⁾ and, on the other hand, to the increase of notifications filed on a prudential basis due to the objective uncertainty of the legislative provisions in force, which the Italian Government subsequently considered to be outside the scope of application of the golden powers regulation.

More specifically, the Report shows that the total number of golden powers notifications received by the Presidency of the Council of Ministers during the year 2019 is equal to 83, of which:

- no. 31 notifications (equal to 38,55% of the total) referred to the sector of defense and national security (pursuant to article 1 of the Decree);
- no. 14 notifications (equal to 16,87% of the total) referred to the sector of electronic broadband telecommunications networks with 5G technology (pursuant to article 1-*bis* of the Decree);
- no. 38 notifications (equal to 44,58% of the total) referred to the sector of energy, transports and communications (pursuant to article 2 of the Decree).

⁽²⁾ See article 1-*bis* of the Decree, introduced by article 1, paragraph 1, of Law Decree no. 22 of March 25, 2019, converted, with amendments, into Law no. 41 of May 20, 2019, and subsequently supplemented and amended by Law Decree no. 105 of September 21, 2019, converted, with amendments, into Law no. 133 of November 18, 2019.

The comparison with previous years shows, as mentioned above, a clear increase in the number of golden powers notifications sent to the Presidency of the Council of Ministers, as summarized in the table below (which does not include the data related to notifications filed pursuant to article 1-*bis* of the Decree given that such provision entered into force in 2019):

Sector	2014	2015	2016	2017	2018	2019
Defense and national security	4	7	8	19	26	31
Energy, transports and communications	4	11	6	11	20	38
Total	8	18	14	30	46	69

Taking into account the notifications filed pursuant to article 1-*bis* of the Decree (sector of electronic broadband telecommunications networks with 5G technology) within the total number of notifications for the year 2019, it can be observed that the number of notifications filed in 2019 (83) has almost doubled compared to the previous year (46).

Finally, the Report also includes data on the outcome of the proceedings initiated by the Presidency of the Council of Ministers regarding all the notifications received during the year 2019. In particular:

- in 13 cases (equal to 15.66% of the total) the Government issued a decree with prescriptions (in 11 cases with reference to notifications filed pursuant to article 1-*bis* of the Decree regarding 5G, one regarding national security and defense, and one in the infrastructure sector);
- in 24 cases (equal to 28.92% of the total) the Government resolved not to exercise the special powers;
- in 15 cases (equal to 18.07% of the total) the simplified procedure for intra-group transactions applied;
- in 19 cases (equal to 22.89% of the total) the notifications concerned transactions that were considered outside the scope of application of the golden powers regulation;
- in 8 cases (equal to 9.64% of the total) the notifications were incomplete and irregular;
- in 4 cases (equal to 4.82% of the total) the notifications were transmitted with reference to transactions already notified and defined, and led to a mere acknowledgement by the Presidency of the Council of Ministers.

For further information, please reach out to your usual Chiomenti contacts, as well as the following.

Contacts

Avv. Francesco Tedeschini

Reference partner – Chiomenti
Corporate - M&A Department
T. +39 06 46622 2370
francesco.tedeschini@chiomenti.net

Avv. Filippo Modulo

Managing Partner – Chiomenti
Corporate - M&A Department
T. +39 06 46622 264
filippo.modulo@chiomenti.net

Prof. Avv. Giulio Napolitano

Partner – Chiomenti
Department of Administrative Law
T. +39 06 46622 806
giulio.napolitano@chiomenti.net

Prof. Avv. Andrea Sacco Ginevri

Partner – Chiomenti
Corporate - M&A Department
T. +39 06 46622 438
andrea.saccoginevri@chiomenti.net
