

### **Golden powers and banks from the perspective of Economic Law**

The framework governing special powers in strategic sectors of the national economy—commonly referred to as *golden power*—today represents a crucial issue in public economic law, situated at the crossroads between the need to safeguard the national interest, the constraints arising from the legal order of the European Union, and the dynamics of the global market.

Over the past decade, this framework has progressively consolidated within a complex legal system positioned at the intersection of administrative law, EU law, and economic law, taking on the characteristics of a paradigm of selective public intervention in the market, based on a delicate balance between economic freedoms, state sovereignty, and the protection of strategic interests.

In this context, Decree-Law No. 21 of 15 March 2012, entitled “*Provisions on special powers concerning corporate structures in the sectors of defence and national security, as well as activities of strategic importance in the sectors of energy, transport and communications*”, converted with amendments by Law No. 56 of 11 May 2012, marked a turning point in the regulation of state intervention in strategic sectors of the economy, introducing a new regulatory framework governing special powers over corporate structures.

This legislative intervention responded to the need to align the domestic legal order with the requirements stemming from EU law, definitively overcoming the previous model based on so-called *golden shares*, which had been deemed incompatible with the fundamental freedoms of the internal market.

In this respect, the case law of the Court of Justice of the European Union played a decisive role, as it mandated the neglect of a privately based model recognised and regulated in company statutes as instruments of private law expressing contractual autonomy (*i.e.*, the *golden share*), in favour of a new, structured system of powers grounded instead in public law, namely in legislative acts that are expressions of political authorities (*i.e.*, special powers).

This new framework is therefore based on an *ex post* control system aimed at monitoring and, where necessary, conditioning transactions that may be detrimental to national interests in the sectors of defence, security, and other strategically relevant fields such as energy, transport, and communications.

*Golden powers* are understood, as is well known, to be the powers that allow the national State to intervene in specific transactions within strategic sectors. Through these special powers, national governments, subject to the fulfilment of specific conditions, may exercise veto rights and/or impose specific requirements and/or conditions on transactions potentially harmful to State interests.

This field is characterised by its topicality, complexity, and transnational nature, demonstrating the growing role of special powers in the protection of strategic assets and prompting new reflections on the balance between the need to attract foreign capital and the safeguarding of national interests.

At the European level, particular attention should be paid to Regulation (EU) 2019/452, which establishes a framework for cooperation among Member States for the screening of foreign direct investments, in light of the principles of proportionality and information cooperation.

From these premises arises the present work, which aims to provide a detailed overview of the relevant legal framework, examining its origins, regulatory evolution, and practical application in the national context. Following an initial reconstruction of the theoretical foundations of special powers, this topic will explore the interaction between golden power and the principles of the European legal order (*e.g.*, freedom of enterprise and protection of competition), as well as the compatibility of such powers with EU law, in particular with the free movement of capital and the freedom of establishment.

Finally, the last chapter seeks to examine the extension of the relevant framework to banks, insurance companies, and other financial intermediaries, critically analysing the issues arising from the concurrent presence of political scrutiny instruments and technical supervisory mechanisms in the financial sector.

After reviewing the delicate relationship between public intervention in the economy and the development of financial institutions, this dissertation focuses on the exercise of Italian golden power in relation to the public exchange offer (PEO) launched by UniCredit S.p.A. for Banco BPM S.p.A., which was blocked by the Italian government following the judgment of the Regional Administrative Court of Lazio (TAR Lazio), Section I, 12 July 2025, No. 13748.