Screening of Foreign Investments in the Space Sector: The Italian (Virtuous) Example

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Abstract

A new legislative trend is spreading among spacefaring States: the inclusion of the space sector under the protection of screening mechanisms. The latter consist in particular powers endowed to governmental authorities by domestic laws with the aim to screen foreign investments in strategic sectors and block them, or condition them, if they raise national security concerns.

Challenging screening decisions is utterly difficult, both at the national and at the international level, due to their political nature and to their exclusion from the scope of application of international investment agreements.

The present paper delves into this matter revolving around the following question: are screening powers an unrestrainable exercise of sovereign rights or is it possible to challenge them?

Italy represents an interesting case study in this regard, having drafted a screening regime that creates a balance between national security concerns and the respect of the rule of law.

Keywords: Space law, investments, FDI, screening, disputes, justice.

1. Introduction

A very concrete way of "*promoting the increased involvement of all countries in space activities*"[1] is through international investments in the space sector. They increase economic growth and create bridges that connect the State of the investor to the State of the target company (the "host-State").

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1 UNGA Resolution 76/3, 25 October 2021, p. 3.

All this allows the integration of different space markets and the interweaving of human, social and economic elements from multiple spacefaring nations. However, foreign direct investments (FDI)[2] are not always virtuous and beneficial for the States involved. They may also result in predatory investments or in politically sensitive investments.

The former are investments where acquirers make cross-border acquisitions and stake purchases in strategically significant targets at a time when there is a financial crisis and the valuations of targets are cheap.[3]

As for the latter, they come from States that are competitors on the geopolitical scenario and may raise security concerns especially when directed towards essential sectors. They can be considered "politically sensitive" inasmuch as they pose a risk control over strategic assets by a not-like-minded State.

Thus, in order to protect their economic interests and to preserve their national security, spacefaring States are increasingly adopting domestic laws, which establish the governmental power to screen FDIs in their aerospace sector.[4]

Screening mechanisms consist in scrutiny and approval processes that need to be completed before certain investment-related actions by foreign individuals or entities will be allowed.[5]

The grounds that can justify the screening of a FDI are quite similar in all regimes around the world. They are centred on the risks or threats that the investment can bring to "national security" (sometime replaced or paired with similar concepts such as "public order" or "essential national interests").[6] Considering the elusiveness of such concept, screening measures represent a strong power in the hands of governments. This power is not only

2 The International Monetary Fund defines FDI as a "cross-border investment in which an investor that is resident in one economy [has] control or a significant degree of influence on the management of an enterprise that is resident in another economy". IMF, *Balance of Payments and International Investment Position Manual*, 2009, p. 100.

3 A. Das, *Predatory FDI during economic crises*, in Emerald Insights: critical perspectives on international business Vol. 17, No. 2, 2021, p. 337.

4 For a general overview of screening regimes and sectors covered therein, see the White & Case Database available at the following link: https://www.whitecase.com/insight-our-thinking/foreign-direct-investment-reviews-2023#home (this and all other links have been accessed last on 15 September 2023). Among the spacefaring States whose aerospace sector is covered by a screening mechanism it is worth mentioning: Canada, USA, China, India, Saudi Arabia, UAE, UK, Germany, France and Italy.

5 T. Voon, *Incoming: How International Investment Law Constrains Foreign Investment Screening*, in Journal of World Investment & Trade, Vol. 24, 2023, p. 76.

6 See UNCTAD, *The Evolution of FDI Screening Mechanisms – Key Trends and Features*, Issue 25, 2023, p. 9. See also UNCTAD, *The Protection of National Security in IIAs*, 2009, p. 73, stating that the different expressions used may very well address the same kind of situations and that it is left "*mainly to the arbitration tribunals to provide some further clarification of these terms*".

strong, in the sense of extensive in scope and incisive in effects, it is also left to significant discretion over its application.
Therefore, in this context characterised by wide margin of arbitrariness and expansive use, it appears evident how screening regimes pose significant barriers to investments in the aerospace sector. In other terms, they can become a form of protectionism, undermining the spirit of cooperation in space activities.
From this, a number of legal questions arise: is the power to screen FDIs unlimited or is it balanced by international principles? What can a foreign investor do when a screening measure results in economic damages? Can States draft their screening regimes so as to enhance cooperation among spacefaring Nations?
The present paper delves into these matters in accordance with the following structure.
The discourse begins in Section 2 with the description of two practical cases occurred in Italy, where the government used its screening power over foreign investments in aerospace companies. The following Section 3 sheds a light on the legal basis that allowed Italy to use such power, namely the so-called "Golden Power" Decree (hereinafter "the Decree"). Section 4 investigates the international principles of investment law that can limit screening measures. It is hold here that the nature, the grounds and the temporal aspect of screening powers render the host-State *de facto* unaccountable. This is often true also at the domestic level, as Section 5 shows. In this context, the Italian regime, however, represents a virtuous example, offering a judicial recourse against its screening measures. The conclusions offer some remarks on the benefits of following the Italian regime which protects national security, without undermining the openness to cooperation with foreign space actors.

2. FDIs in the Italian Aerospace Sector

The best way to understand the trend of screening FDIs in the aerospace sector is through some practical examples. Among the many spacefaring States of the world, Italy offers an interesting framework. Since the inclusion of the space sector under the screening regime (*infra* at 3.1) in 2017, there have been multiple instances of space investments screened by the government. Two cases are particularly telling of the manners in which the Decree can affect space investors. The first case offers an example of a *veto* over an acquisition, the second case shows the conditions that can be imposed on transfers of space technologies.

Case 1 – Altran Technologies / Next Ast srl
Altran Technologies (known today as Capgemini Engineering) is a French multinational company, specialized in digital development and engineering, including aerospace applications.

Next Ast srl is an Italian company created in 2017 as the "daughter-company" of Next Ingegneria dei Sistemi Spa, which operates in the field of so called "embedded software" for the aerospace and defense sectors. In particular, it is specialized in the provision of management software for missile technologies, having Leonardo Spa and Thales Alenia Space as its main customers.
Since the early 2010s, Next Ast was rumored to be in financial crisis.
In 2017, Altran Technologies attempted to acquire Next Ast.
In order to close the deal, Altran Technologies notified its preliminary agreement for the acquisition of the entire social capital of Next Ast to the Italian authorities.[7]
The latter, however, blocked the investment due to the nature of Next Ast's activities, which "*included contractual relations of a confidential and strategic nature for the defence and national security systems*".[8] The *veto* was deemed the only possible option as the interests at stake could not be protected with less intrusive measures.
Next Ast was acquired the next year by a consortium of Italian companies with strong connections with the Ministry of Defence.

Case 2 – Avio Spa / ArianeGroup GmBh
Avio Spa is an Italian company specialized in space propulsion as well as in the definition and integration of space launch systems, like Vega.
ArianeGroup GmBh (AGG) is the German branch of ArianeGroup, which is a joint venture of two French companies: Airbus and Safran. AGG's business activity is focused on propulsion systems and equipment for space and defense programs.
In 2018, Avio Spa notified to the Italian authorities an industrial agreement with AGG that regarded the transfer to AGG of the use of a license connected to a specific *know-how*: the production and integration of liquid oxygen turbo-pumps for the cryogenic engines *Vulcain* and *Vinci*, to be used on the Ariane 6 and its following versions.[9]
After the screening, the President of the Council of Ministers issued a decree (DPCM 17 April 2018) that ruled for the green light on the operation under stringent conditions.
Because of the relevance of the transferred *know-how* for the Italian capacity to access space, and therefore for the strategic nature of the technology

7 L. Liviadotti, *Foreign Direct Investment (FDI) Screening: Italy's "Golden Power" and the Geopolitics of Economic Protection*, 2021, p. 112.
8 *Relazione al Parlamento in materia di esercizio dei poteri speciali (Doc- LXV n. 1)*, 2018, p. 11. The decision was taken with the following decree of the President of the Council of Ministers: *DPCM poteri speciali società Altran Italia Spa, 2 novembre 2017*.
9 Italian Senate of the Republic, Relazione al Parlamento in materia di esercizio dei poteri speciali (Doc- LXV n. 1), 2018, p. 16.

involved, it was necessary to impose on both companies specific requirements and prescriptions subject to governmental supervision.[10]
Despite such burden on the operation, the latter was concluded and as of 2023 there have not been any known violations of the governmental impositions.
The facts described in the cases above show how investing in the aerospace sector – in Italy just like in most other spacefaring States[11] – can be done only within a system of mandatory procedural obligations and under the risk of governmental interventions. In the two case studies, the foreign investors created new subsidiaries and concluded deals with Italian companies spending time and money on negotiations and notarial acts. However, their efforts were significantly prejudiced by the intervention of the Italian government.
Italy acted in accordance with its "Golden Power" Decree. Thus, in order to understand if the screening power was exercised in line with international obligations and in order to explore the legal remedies available to foreign investors, it is first necessary to see what the Italian regime sets forth.

3. The "Golden Power" Decree

With Law Decree No. 21 of 2012,[12] the Council of Ministers was provided with the "golden" power to screen foreign investments in Italian companies prior to their admission and impose on them the necessary measures to protect strategic national interests.[13] The scope of application, the procedural obligations and the types of screening powers can be summarized as follows.

3.1. Scope of Application

The Decree can be used when FDIs target economic sectors considered strategic. They were originally identified with the sectors of defense, energy, transportation, and communication.[14] However, the scope of the review process was periodically expanded.[15]
In particular, with Decree Law No. 148 of 2017 there was the addition of high-technology strategic sectors, such as critical and sensitive infrastructures;

10 *Id.*, p. 17.
11 See the White & Case Database above at 4.
12 Decree Law No. 21 of 15 March 2012, converted with modifications by Law No. 56 of 11 May 2012.
13 See for all: A. Sandulli, *La febbre del Golden Power*, 2022, p. 748 et seq.
14 The Decree, Art. 2.
15 First, in 2017 with Law Decree No. 148 of 16 October 2017, converted with modifications by Decree Law No. 172 of 4 December 2017. Then again with Decree Law No. 22 of 25 March 2019, converted with modifications by Law No. 41 of 20 May 2019. Each following year new additions were made until the latest with Decree Law No. 10 of 1 February 2023.

security in critical inputs supply; access and/or control of sensitive information; critical technologies. In the latter sector, it is possible to find the express inclusion of space technologies. It must be stressed however that investments in the space sector can undergo review also based on other "umbrellas", such as the defense sector, depending on the activities performed by the target space company (as in Case 1 above).

The inclusion of the aerospace sector under a screening mechanism in Italy anticipated its identification by article 4(1) of Regulation (EU) 2019/452 as a sector where FDIs are "*likely to affect security or public order*". Therefore, its inclusion is now a common feature also of other EU Member States' screening regimes.[16]

For a FDI in the aerospace sector to be subjected to a review there needs to be an additional element: the existence of a "*threat of serious prejudice to the essential interests of defense or to the national security*".[17]

According to article 1(3) of the Decree, assessing such threat means looking at whether the investment may affect the preservation of national technology as well as the prosecution of activities, especially strategical ones, and of contracts with public administrations.[18] Another aspect to be considered is the connections between the acquirer and other subjects (public or private) that are either criminal or undemocratic or act in violation of the rule of law.[19]

In addition, if the acquisition of shares is made by an entity outside the European Union, the Council of Ministers may consider various circumstances, including direct or indirect control of the acquirer by a public administration of a non-EU state, also through ownership structure or financing.[20] Also on this aspect, the Italian legislation is in line with the EU framework.[21]

16 For example, in France, Decrèt n. 2018-1057 du 29 novembre 2018 relatif aux investissements etrangers soumis d'autorisation prealable, which entered into force on 1 January 2019, expanded the list of business sectors that are subject to screening, specifically, "*enterprises in the aerospace and civil protection sectors or those who conduct R&D activities concerning cybersecurity, artificial intelligence, robotics, additive manufacturing, semi-conductors, as well as the hosts of certain sensitive data*". See T. Ishikawa, *Investment Screening on National Security Grounds and International Law: The Case of Japan*, in Journal of International and Comparative Law, vol. 7, no. 1, 2020, p. 80.

17 The Decree, Art. 1(1).

18 Id., Art. 1(2)

19 Id., Art. 1(3), let. b.

20 Id., Art. 1(3bis).

21 Art. 4(2) of Regulation (EU) 2019/452.

3.2. Procedural Obligations

If a FDI falls under the scope of application of the Decree, a series of procedural obligations arise both for investors and for the Council of Ministers.

All companies of the host-State operating in the listed sectors, including those in the aerospace sector, must notify[22] the Council of Ministers of any transaction that could result in the transfer or availability of assets related to the identified strategic sectors to foreign entities.[23]

Once the screening process is initiated, the companies involved can participate in the review by submitting documents and information to the governmental authorities. The latter, however, are free to adopt their decision based on other sources.

As the Decree states in article 1(3), the evaluation of the threat must be conducted in accordance with the principles of proportionality and reasonableness.

After 45 days from the notification, the Council of Ministers issues its decision, specifying the reasons on behind it. As it was shown in the cases above, this obligation usually takes the form of a mere reference to the necessity of protecting national security interests.[24]

3.3. Types of Screening Powers

Depending on the evaluation of the security risks involved in the operation, it is possible to individuate three different degrees of intervention, which correspond to the following types of measures:

1) The admission of the investment as it was notified, without modifications.
2) The imposition of specific conditions or requirements on the operation,[25] as a pre-requisite to its admission.
3) The *veto* on the adoption by the target company of decisions (e.g. through board resolutions) that modify the ownership, control, or availability of its assets in favor of the foreign investor,[26] or the

22 Recently, the Italian legislator, with the DPCM 133/2022, has introduced also the possibility to pre-notify the operation, guarantying grater predictability of the outcome.

23 Id., Art. 1(1) and (1bis).

24 See for example the preamble of Decree of the President of the Council of Ministers of 6 June 2013, adopted with regard to a case involving Avio Spa (different from the one described in case 2), published on GU No. 193 of 19 August 2013. The reasons for the screening measures were explained as follows: "*Ritenuto necessario stabilire specifiche condizioni ai sensi e per gli effetti dell'art. 1, comma 1, del decreto-legge 15 marzo 2012, n. 21, ai fini di tutela degli interessi essenziali della difesa e della sicurezza nazionale*".

25 The Decree, Art. 1(1) let. a.

26 Id., Art. 1(1) let. b.

opposition to the acquisition of a level of shares in the target company that may compromise defense or security interests.[27]

3.4. Common Elements between Italian and Foreign Screening Mechanisms

The essential aspects of the Italian screening regime are largely resembled in other spacefaring States, also beyond the EU borders.

A few examples are the United Kingdom, the United States and China.

The UK includes "*satellite and space technologies*" among the sectors that are subject to its national FDI screening mechanism.[28] If an investment in that sector may give rise to a risk to national security, it can be scrutinised by the government.[29]

Also in the USA it is possible to find a similar configuration, with the inclusion of space companies under the expressions 'critical infrastructures' and 'critical technologies'.[30] As in the previous regimes, the review process is triggered by investments that can pose a threat or risk to national security.[31]

The Chinese legislation follows a similar approach.[32] The government has broad discretion in the recognition of new threats that could affect the security of assets recognized as critical. Space activities can fall under a variety of terms used in the screening regime, such as 'infrastructure', 'transportation services', 'information technology', and 'key technologies'.

In light of these similarities among screening regimes, it can be said that any foreign entity who would like to invest in space companies – in Italy as much as elsewhere – is confronted nowadays with the concept of "*national security*".

Domestic legislations on screening powers never offer a proper definition of "*national security*". What they usually indicate is a set of criteria that the governmental authority shall take into consideration when assessing the threat or the effects that FDIs have on strategic sectors (see section 3.1 above).[33] However, the wording used therein – e.g. "*whether the investment*

27 Id., Art. 1(1) let. c.

28 UK National Security and Investment (NSI) Act, 2021.

29 See the UK Government's Guidance on the NSI Act, available at: https://www.gov.uk/guidance/national-security-and-investment-act-guidance-on-acquisitions.

30 US Foreign Investments Risk Review Modernization Act, 2018, Pub. L. No. 115-132, Section 1701, 132 Stat. 2174.

31 Ibid., Section 1703.

32 V. Bath, *Foreign Investment, The National Interest and National Security – Foreign Direct Investment in Australia and China, Sydney Law Review*, 27, 2012.

33 For example, in the US regime, in lieu of defining national security, there is a non-exhaustive list of eleven factors that the screening authority (CFIUS) may consider to determine if a proposed transaction threatens to impair US national security, including the potential effects on critical infrastructure, critical technologies, and the long-term projection of the US requirements for sources of energy and other critical resources and materials. See M. Du, *Huawei Strikes Back: Challenging National Security Decisions Before Investment Arbitral Tribunals*, in Emory International Law Review, Vol. 31, No. 1, 2022.

may affect the preservation of national technology"[34] – leaves ample margin of discretion to the assessing authorities. Deciding that a certain FDI affects national security and that another does not is a case-by-case evaluation, lacking proper objective parameters.

However, screening powers affect foreign entities and, therefore, they must be considered also in their international dimension. At the international level, an articulate system of norms protects foreign investors under the aegis of investment agreements. Can such system constrain the broad power to screen FDIs?

4. Screening Measures in International Investment Law

4.1. Principles on the Treatment of Foreign Investors and Screening Measures

When host-States adopt measures against foreign investors based on national security concerns they must do so in conformity with their international investment obligations.

More specifically, through bilateral investment treaties (BIT), States agree to treat foreign investors according to the following principles: national treatment (NT), most favoured nation treatment (MFNT), fair and equitable treatment (FET).[35]

These principles represent the basis for challenging host-States' decisions in front of international tribunals. However, when it comes to screening measures their effectiveness is significantly undermined.

The principle of NT generally refers to a treatment accorded by a host State to foreign investors and their investments that is no less favorable than that accorded to domestic ones. The *rationale* of the standard is to mandate a host-State not to create a less favorable business atmosphere for foreign investors compared to domestic ones.[36]

Similarly, the principle of MFNT aims to make sure that no foreign investor is discriminated against foreign competitors from other States.[37] It does not

34 See Decree above at 25, Art. 1(2).

35 FET is sometimes connected to the minimum standard of treatment (MST). It is beyond the purpose of the present paper to determine whether the two principles overlap, or whether the former sets a higher threshold compared to the latter. It is useful to highlight however that MST – as defined in the *Neer case* – may be breached by a screening regime that is outrageously deficient of legal certainty. See M. Klein Bronfman, *Fair and Equitable Treatment: An Evolving Standard*, in Max Planck Yearbook of United Nations Law, Vol. 10, 2006, p. 665. See also OECD, *Fair and Equitable Treatment Standard in International Investment Law*, in OECD Working Papers on International Investment, Vol. 3, 2004, p. 8.

36 R. Dolzer and others, *Principles of International Investment Law*, Oxford University Press, 2012, p. 198.

37 J. Salacuse, *The Law of Investment Treaties*, Oxford University Press, 2010, p. 251.

create an absolute right of access to the territory of the host state, but a relative right.[38] In other words, foreign investors have the right to invest in the territory on the same terms as their foreign counterparts. In principle, it is not possible to close their access to certain sectors while opening such sectors to others or to impose conditions for establishment on them that are less favorable compared to other foreigners.[39]

The violation of NT and MFNT depends on the discriminatory nature of the treatment reserved to the foreign investor, either in relation to national investors (NT) or in relation to foreign investors of a different nationality (MFNT). However, the use of the expression "*in like situations*" in standard NT and MFNT clauses limits significantly their impact with regard to screening powers.

The "*likeliness*" of treatment under the NT principle is simply inapplicable: national investments are excluded from the scope of application of screening regimes, leaving no room for any parallelism.

A breach of MFNT, on the other hand, might be claimed, but only on the basis of a screening law that itself provides higher or lower thresholds for specific States.[40] It is evident that there is no need for host states to establish different screening conditions on the basis of nationality, when the broad concept of "*national security*" provides already the necessary grounds to screen, under the same thresholds, FDIs of different origin in different manners.

For these reasons, the NT and the MFNT principles cannot be violated by the exercise of screening powers.

As for the FET principle, it represents a stand-alone standard,[41] not connected to relative elements like in the NT and MFNT.

Even though the notion of what is "*fair and equitable*" remains quite elusive, it is possible to connect it to procedural fairness, transparency and proportionality.[42]

A breach of FET may be claimed when the screening measure is completely arbitrary, it lacks evidentiary support, it is unreasonably grave, or it has not been adopted with due process. This opens the door for foreign investors to

38 S. Nikiema, *The Most-Favoured Nation Clause in Investment Treaties*, in IISD Best Practices Series, 2017.

39 Ibid.

40 T. Voon, *Incoming: How International Investment Law Constrains Foreign Investment Screening*, in Journal of World Investment & Trade, Vol. 24, 2023, p. 75.

41 See C. Schreuer, *Fair and Equitable Treatment in Arbitral Practice*, in Journal of World Investment & Trade, Vol. 6, 2005, p. 357. See also R. Hird, *Thomas W. Walde and Fair and Equitable Treatment*, in Journal of Energy and Natural Resources Law, Vol. 27, 2009, p. 367.

42 C. Campbell, *House of Cards: The Relevance of Legitimate Expectations under Fair and Equitable Treatment Provisions in Investment Treaty Law*, in Journal of International Arbitration, Vol. 30, 2013, p. 361.

bring international claims against host-States' screening measures that are "*unfair and unequitable*".[43]
However, the protection of the FET principle is constrained by a jurisdictional hurdle connected to the timing of the screening measure.
On this regard, a preliminary distinction is necessary. It is possible to identify two "times" or phases of investments: the pre-establishment phase and the post-establishment phase.
The first one concerns the admission of the investment into the territory of the host state: the investor has not yet made an international investment, but is in the process of completing one. This is precisely the phase where screening powers are exercised.
The second one covers the whole life of an international investment after it has occurred.
Usually, BITs are not applicable to the pre-establishment phase. They only accord protection to post-establishment investments.
When the admission phase is protected by States, it is either "*in accordance with [their] legislation*", limiting any claim to violations of internal laws,[44] or it is through the protection of NT and MFNT principles only, excluding any application of FET (such as in the US, in Japan and in Canada).
This means that the use of arbitrary or unfair screening powers cannot be reviewed against the obligations contained in BITs. Hence, screening measures can never trigger investor-State dispute settlement (ISDS) clauses.
In view of all that, it appears that screening powers remain inherently non-justiciable at the international level. Does this mean that foreign investors have no possibility to challenge screening measures?

5. The Role of Domestic Courts

In view of the impossibility to access justice through the system of international investment law, the only option left to foreign investors is to resort to domestic judicial venues.[45]

43 Screening measures have been challenged in front of arbitral tribunals on grounds of FET violations in the following cases: *Global Telecom Holding v. Canada*, ICSID case No. ARB/16/16, award of March 27, 2020. *Devas v. India*, PCA Case No. 2013-09, award of July 25, 2016. *Deutsch Telecom v. India*, PCA Case No. 2014-10, award of May 27, 2020.

44 See, for example, Germany's Model BIT of 2008 at its article 2: "*Each Contracting State shall in its territory promote as far as possible investments by investors of the other Contracting State and admit such investments in accordance with its legislation*".

45 For the sake of argument, the discourse in this section disregards the possibility to request diplomatic protection, considering the unlikeliness of resorting to that instrument by foreign investorsin front of screening decisions.

According to a recent study conducted by UNCTAD, only in 14 out of 37 countries reviewed, the investor has a right to judicial appeal against a decision blocking the proposed investment.[46]

Most notably, in the USA the final decision on the screening of FDIs is taken by presidential decree, which is not justiciable in front of domestic tribunals. This principle was explicitly stated in the *Ralls Corporation v. CFIUS* case.[47]

In general, it can be said that national judicial authorities often do not have the power to review screening measures because of their political nature. Even in those jurisdictions where a form of judicial review is envisaged, the latter is hindered by a "natural" deference to governmental decisions over national security concerns.[48] All this leaves foreign investors with limited and ineffective judicial remedies.

However, this is not always the case.

In Italy, screening decisions are considered "*acts of high administration*", which – by law – are justiciable in domestic administrative courts.[49] The judicial review of this type of acts is usually linked to manifest illogicalities or incongruity of the motivation. However, as mentioned above, article 1(3) of the Decree establishes that the evaluation of national security threats must be conducted in accordance with the principles of proportionality and reasonableness. The Italian judge, therefore, has also the power to investigate whether there was the possibility to adopt alternative measures or whether the intended goal was reached in an excessively burdensome manner.

This broader standard of review resulted in a dozen cases brought in front of administrative courts in the last five years.[50] Notably, in its judgement n. 8742/2020, the Regional Administrative Tribunal (TAR) of Lazio – which is the one in charge of claims on the Decree –declared that a procedural error led to an unjust decision by the Government and ordered the renewal of the screening process, ruling in favour of the foreign investor.

46 See UNCTAD (2023), above at 6, p. 13.

47 According to the US Court of Appeals for DC: "*Courts are barred from reviewing final 'action[s]' the President takes to suspend or prohibit any covered transaction that threatens to impair the national security of the United States*". See US Court of Appeals for DC, *Ralls Corp. v. CFIUS*, case No. 13-5315, decided July 15, 2014, p. 21.

48 See M. Du, above at 41. See also M. Potestà and others, *Investor-State Dispute Settlement and National Courts Current Framework and Reform Options*, SpringerOpen, 2020: "*Domestic courts are often considered inadequate for the settlement of investment disputes, due in particular to their perceived inefficiency, delays, actual or apparent bias to foreign investors, lack of independence from the host State, which is inevitably the respondent in the dispute, and lack of expertise to apply international law*".

49 E. Tepedino, *Golden powers: i poteri speciali del Governo al vaglio del giudice amministrativo*, in Amministrazione in Cammino, Vol. 2, 2022.

50 The relevant judgments can be found here: https://www.giustizia-amministrativa.it/web/guest/dcsnprr.

The possibility to challenge screening decisions and the actual prospect of a positive judicial outcome is symptomatic of a clear legislative choice by Italy: finding a balance between national security concerns and the openness to foreign investors.

6. Conclusions

The landscape for the space sector is changing. When a space company intends to expand its business and invest abroad, it needs to be aware not only of the national legislation on space activities, but also of the legal framework on screening investments. A decision to invest in the space sector depends on them. Considering the inefficiencies of the international protection of investments in the pre-establishment phase, foreign investors may be attracted and redirected towards States that have a screening regime based on clear procedural rules, extensive grounds of appeal, and an impartial judicial authority. All this provides for a form of legal comfort to investors, which enhances attractiveness of the domestic industrial fabric.
In this regard, the Italian screening regime represents an example to follow. It has the virtue of safeguarding the necessary discretion of the government, while setting clear safeguards on its fair, proportional and reasonable use. The result is a framework that incentivizes continuous investments in the Italian space sector.