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ABSTRACT

The essay provides a brief overview of the transition that occurred in major legal systems from *golden share* to *golden power* provisions in order to protect national strategic interests in the economic field, with a focus on Italy. A closer look is then dedicated to a recent proposal for an EU regulation on foreign investment control. Final thoughts are developed in light of recent lines of social science research, pointing at the existence of geo-economic contests in a context of economic wars.

KEYWORDS

Golden share – Golden power – Competition – Merger control – Geo-economics – Economic intelligence – Economic war

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1. Something like an introduction

There is law, there is economics, there are opportunities to assess legal systems by means of economic theories, there is a need to understand the legal frameworks that discipline the practices of economics: the structural components of any analysis, even when unperceived or undeclared, always depend on relevant times and spaces, history and geography. All this is just a different way to name, if you like, the cultural dimensions of human actions and their interpretations, when considering a social matrix shaped by relationships of power.

What occurred in the last few years, as regards the way major legal systems defined and protected national strategic interests within the economic arena, is an interesting test-bed for what remarked here above. In fact, following the end of the Cold War and the envisaged beginning of a global free market era, most of the States enforced limited sets of provisions for securing their capability to control economic and business activities. However, in the wake of the widespread crisis now known as *The Great Recession*, States' controls and prerogatives on economics are expanding again, in both direct and indirect ways.

The following brief essay aims to offer an examination of the transition that occurred in a number of legal systems – with a focus on Italy – from the so-called *golden shares* to new special powers, often titled *golden powers*, with possible consequences on the interactions between foreign investment and merger controls. Further thoughts will then be developed in light of some geo-economic and economic intelligence lines of research.

2. From golden shares to golden powers: a paradigm-shift (with some italian applications)

A golden share is a type of share that gives its shareholder (usually a government organization) special veto power over changes to the company's charter, as well as over a takeover or acquisition by other companies.

Such shares, to be issued after passing special resolutions and changing the memorandum and articles of association of a company, were a British invention of the 1980s, used to safeguard some public control over the management and ownership of formerly State-owned companies after their privatization. Golden shares were soon adopted by many Governments as a pivotal instrument of the privatization processes that occurred during the 1990s¹. However, provided a common reference to some general legitimacy principles², a fundamental difference among European legal systems emerged.

In the United Kingdom, in fact, there was never an organic discipline of the golden shares, typically relying upon a case-by-case issuance of a special share by the privatized company, with different prerogatives to be exercisable within a limited period. European continental regimes, on the other hand, used to define nature, goals and modes of exercise of golden shares by means of public provisions, often without time limits for the implementation of related powers. Incidentally, a non-secondary effect of these trends has been to trigger an extensive judicial saga at a European Union level.

The EU Commission and the Court of Justice have indeed spent a lot of effort in delimiting the legitimacy of golden shares, raising relevant issues of compatibility of the various rules adopted by several Member States with the rights of free circulation of capitals established by the same EU fundamental treaty. As a consequence, limit principles were set up by the jurisprudence, pointing to the need to circumscribe the acceptability of the State's prerogatives on controlling the ownership and management of privatized undertakings. All in all, such prerogatives and their exercise must be non-discriminatory, appropriate and proportionate to imperative reasons of general interest³.

The need to define and respect such a legitimacy framework has been duly considered in Italy, when a new legislation on special powers was adopted in 2012; the legal respect shown for the established principles, however, did not reduce the originality of the new discipline, when contemplated in light of the pre-crisis globalist sentiment. In fact, in order

¹ For a historical survey of the privatization processes within different EU countries, see D. PARKER (ed.), *Privatization in the European Union. Theory and Policy Perspectives*, London-New York, Routledge, 2002; a broader (critical) perspective is now offered by P. THER, *Europe Since 1989. A History*, Princeton, Princeton University Press, 2016. For a close-up examination of golden shares, see S. GRUNDMANN - F. MÖSLEIN, *Golden Shares - State Control in Privatised Companies: Comparative Law, European Law and Policy Aspects*, 2003, mimeo, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=410580.

² Whereas article 63 of the TFEU states that “*all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited*”, article 65 establishes that “*the provisions of Article 63 shall be without prejudice to the right of Member States [...] to take measures which are justified on grounds of public policy or public security*”.

³ The EU Commission offered some guidelines on the legitimate limits to investment coming from other EU Member States (see *Communication of the Commission on Certain Legal Aspects Concerning Intra-EU Investment*, 97/C 220/06, in O.J. C220, July 19, 1997, 15 ff.); the EU Court of Justice, however, had to further intervene on several occasions thereafter (for an updated view, cf. I. ANTONAKI, *Keck in Capital? Redefining 'Restrictions' in the 'Golden Shares' Case Law*, in *Erasmus Law Review*, vol. 9, no. 4, 2016, 177 ff., available at http://www.erasmuslawreview.nl/tijdschrift/ELR/2016/4/ELR_2016_09_04_003.pdf).

to understand how relevant the transition from golden shares to golden powers has been, it is sufficient to read the same title of Decree-Law no. 21 of March 15, 2012 (converted, with amendments, by Law no. 56 of May 11, 2012): *Rules on special powers in corporate governance in the defense and national security sectors, as well as referring to activities of strategic importance in the fields of energy, transport and of communications*⁴.

The Italian golden power rules stipulate that an inter-ministerial committee may exercise veto powers on extraordinary operations related to companies that are incorporated in Italy and involved in special activities indicated by the law (see decree of the President of the Council of Ministers no. 108 of June 6, 2014). Now, the public or private nature of the companies' ownership has no relevance: a government's intervention is no longer triggered, as in the case of golden shares, by the move of an undertaking from public to private ownership, with the consequent need to check the activities of the new proprietors. Here, what matters are the nature of the activities and investors' foreign origins, according to a genuinely strategic vision of protecting paramount national interests, first of all referring to defense and security.

The new powers attributed to the public government on business activities *vis-à-vis* foreign investment are quite ample, as they foresee a direct intervention on the contestability and governance of companies, with applicable measures ranging from the imposition of specific conditions to be fulfilled by the company while carrying out its activities, up to vetoes against the new company's shareholders, as well against the adoption of shareholders' resolutions. The law allows to block changes of the corporate purpose, companies' break-up or mergers, divestment of branches, transfer abroad of seats and premises. Also, stock acquisitions are subject to precise information obligations to the President of the Council of Ministers, when certain thresholds are met: omitted notifications might be fined not less than 1% of the sum of the turnovers of the companies involved, up to twice the value of the transaction⁵.

Very recently, amendments of Decree-Law no. 21/2012 have been adopted in order to further enhance public controls and measures. Following art. 14 of Decree-Law no. 148 of October 13, 2017, new objective and subjective areas have been established, and a set of detailed regulations for "*technology-intensive sectors*" related to energy, transport and communications are to be adopted soon. Also, new penalties have been introduced in the case of failures by the foreign investors to notify new purchases of shares.

In the aftermath of the recent amendments, a string of significant applications of the special powers occurred in Italy. For instance, in the face of a new purchase of shares of Italy's main information and communication technology group, Telecom-TIM, made by a

⁴ Among the most recent Italian literature on the topic, see M. LAMANDINI, *Golden share e libera circolazione dei capitali in Europa e in Italia*, in *Giurisprudenza Commerciale*, 2016, I, 671 ff.; F. GASPARI, *Libertà di circolazione dei capitali, privatizzazioni e controlli pubblici. La nuova golden share tra diritto interno, comunitario e comparato*, Turin, 2015.

⁵ For more details, see the information provided by the Italian Ministry of Economy and Finance, Department of the Treasury, available at http://www.dt.tesoro.it/en/faq/faq_privatizzazioni.html#faq_0002.html.

French-based media group, Vivendi, a Government decree adopted on October 16, 2017, imposed detailed measures for some companies of the Telecom-TIM group, considered to be companies holding strategic assets for national defense and security. Prescriptions have been focused on maintaining the stable maintenance and security functions of networks, services and support for strategic activities in Italy. Measures have also been taken against Vivendi (the group presently holds a 24% stake in the ordinary share capital of Telecom-TIM, and, according to a recent statement of the Italian national commission for companies and the stock exchange, exercises *de facto* control on the group)⁶.

On November 2, 2017, a further Government decree imposed new measures upon the Telecom-TIM group, in order to safeguard the safety and functioning of telecommunication networks and infrastructures, with a request for adequate development and maintenance plans. On the same November 2, 2017, the Italian Government also resolved to forbid the acquisition of Next, an Italian company operating in ballistics and air control engineering, attempted by a French group, Altran. Such a veto against the proposed operation signals a new level of public alert regarding the protection of economic strategic assets: in fact, it is the first time an acquisition has been denied in Italy under the golden powers rule.

3. Foreign investment and merger controls

Italian rules on foreign investment control and its recent applications are not an original, nor an isolated experiment; a similar design and intent can be found in a number of acts and interventions adopted by European States, all aligned with the need to enhance special powers (although more or less extended, based on different activation conditions and thresholds). Also, numerous non-European systems, including USA and China, have long been challenging foreign investment⁷.

The issue of controlling foreign investment when targeting national strategic assets has become so important in Europe that it has finally reached the EU level: a comprehensive package of documents and legislative proposals on trade controls has been unveiled in September 2017, and the same President of the EU Commission delivered an unusually explicit statement about it⁸.

⁶ See CONSOB, Decision n. 0106341 of September 13, 2017, available at <http://www.consob.it/web/consob-and-its-activities/other-regulatory-measures/documenti/english/resolutions/c0106341.htm>.

⁷ For a useful report on the state-of-the-world, see F. WEHRLÉ - J. POHL, *Investment Policies Related to National Security: A Survey of Country Practices*, OECD Working Papers on International Investment, 2016/02, Paris, June 2016, available at <http://dx.doi.org/10.1787/5jlwrrf038nx-en>. Regarding India, that was not part of the aforementioned report, a recent Government's circular provides an updated view of its current policy (see Department of Industrial Policy & Promotion, *Consolidated FDI Policy Circular of 2017*, August 2017, available at <http://dipp.nic.in/policies-rules-and-acts/policies/foreign-direct-investment-policy>).

⁸ "Let me say once and for all: we are not naïve free traders. Europe must always defend its strategic interests. This is why today we are proposing a new EU framework for investment screening. If a foreign, state-owned, company wants to

The core of the new EU legislation is a plan for a *Regulation of the European Parliament and of The Council establishing a framework for screening of foreign direct investments into the European Union*⁹. The proposed new piece of legislation aims at allowing the EU Commission to intervene in cases where foreign (to be understood as coming from outside the EU) investment may affect projects or programs having EU interest, in terms of security or public order. In practical terms, the way forward is to establish a cooperation mechanism based on the obligation that Member States inform the Commission about any non-EU investment to be screened according to national applicable laws, with the possibility for the EU institutions to issue a non-binding – but highly authoritative – opinion.

Because foreign direct investment may take the form of mergers and acquisitions, or joint ventures, they can constitute concentrations, therefore falling within the scope of the legal framework already detailed by the EU competition law for such operations. As if to dispel any doubts about possible system breakages to be provoked by the new rules, the regulation proposal stresses the fact that the existing discipline (namely article 21(4) of the EU Regulation no. 139/2004) already allows EU Member States to take appropriate measures against concentration projects in order to protect legitimate interests of public relevance, such as those related to public security and media pluralism¹⁰.

Merger controls established by competition laws as a tool to double-check national public interests in the economic/entrepreneurial field, now to be fine-tuned with the increasing amount of new special powers' regulations, is a critical issue, albeit (until now, at least) largely unnoticed by academic observers¹¹. Again, an analysis of the Italian legal system provides a good example of the troubled, interesting times we are experiencing, because of a natural experiment recently provided by the national lawmaker.

purchase a European harbour, part of our energy infrastructure or a defence technology firm, this should only happen in transparency, with scrutiny and debate" (J.C. JUNCKER, *State of the Union Address 2017*, September 13, 2017, available at http://europa.eu/rapid/press-release_SPEECH-17-3165_en.htm. See also the wrap-up document available at http://trade.ec.europa.eu/doclib/docs/2017/september/tradoc_156040.pdf).

⁹ <https://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-487-F1-EN-MAIN-PART-1.PDF>. See also COM(2017) 487 final (<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017SC0297&from=EN>); COM(2017) 494 final (<https://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-494-F1-EN-MAIN-PART-1.PDF>); further side-information available at http://europa.eu/rapid/press-release_IP-17-3183_it.htm.

¹⁰ Among the (scarce) literature on the topic, see A. JONES, J. DAVIES, *Merger Control and the Public Interest: Balancing EU and National Law in the Protectionist Debate*, in *European Competition Journal*, vol. 10, no. 3, 2014, 453 ff., available at <http://www.tandfonline.com/doi/pdf/10.5235/17441056.10.3.453?needAccess=true>; K. FOUNTOUKAKOS - M. HERRON, *Merger control and the public interest: European spotlight on foreign direct investment and national security*, in *Competition Policy International*, December 2017, 1 ff., available at <https://www.competitionpolicyinternational.com/wp-content/uploads/2017/12/Europe-Column-December-Full.pdf>.

¹¹ Chinese merger control, for instance, has often been considered to be more a protectionist device than a fair rule of the game (cf. Y. SVETIEV - L. WANG, *Competition Law Enforcement in China: Between Technocracy and Industrial Policy*, in *Law and Contemporary Problems*, vol. 79, no. 4, 2016, pp.187 ss., available at <http://scholarship.law.duke.edu/lcp/vol79/iss4/7/>; for a peculiar "crusade-like" approach to the issue, see N. PETIT, *Chinese State Capitalism and Western Antitrust Policy*, in *Concurrences*, no. 4, 2016, 69 ff.).

Following a revision of the Italian competition law passed in year 2012 (article 16 of Law no. 287/1990, modified by Decree-Law no. 24 of January 24, 2012, converted, with amendments, by Law n. 27 of March 24, 2012), the applicable thresholds to be considered by the national competition authority for screening merger operations switched from a criterion based on the relevance of the turnover of the target company or the acquiring company to a criterion where both turnover's thresholds had to be fulfilled (at that time relevant turnovers being €47 million and €474 million, respectively). As a consequence, the number of merger operations notified to the Italian Competition Authority dropped from 459 to 80 between 2012 and 2013, remaining very low in the following years (45 in 2014, 51 in 2015, 52 in 2016).

Applicable turnover thresholds have been further revised by Law no. 124 of August 4, 2017, now forecasting an amount of €492 million for the turnover realized in Italy by all the undertakings concerned by the merger, and €30 million for each one of at least two of them. It is too soon to tell how much the new amendment will impact the monitoring capabilities of the Italian competition authority, but we can already anticipate that even the revision of a tiny detail of competition applicable rules can produce significant effects on broader economic and political balances.

To be clear, during the most delicate years of the global economic crisis, the shopping carried out by competitors and more generally foreign investors in the segment of medium-sized and small-sized companies – *i.e.* the backbone of the Italian industrial structure – could not be verified by important institutional controls, such as the ones by the national competition authorities, therefore escaping any record of its effects on technology and know-how transfers abroad. Time will tell how much the legal experiment sketched here above will affect the national economic and entrepreneurial scenario in the long run.

4. Geo-economics, economic intelligence, and the law

It is quite evident that the new position taken by the highest EU institutions regarding foreign investment aims at targeting, first of all, the frenzied shopping Chinese State-Owned Enterprises and related entities carried out in the last few years across Europe. Probably in order to brush up its look while facing growing requests for reciprocity of investment and buyout conditions, the People's Republic of China's main economic regulators recently issued a set of guidelines, jointly outlining a milder approach towards foreign investment in China; an official statement also envisaged the possibility that the current 49% cap imposed on foreign investment in Chinese securities companies, securities fund management companies, and future companies, will be raised to 51%¹².

¹² See KING & WOOD MALLESONS, *China issues guidelines on overseas investments*, in *China Law Insight*, August 2017,

Provided that, again, we will have to stay tuned and follow further developments, all the aforementioned activities prove that a new level of political confrontation on economic issues has been reached, with a revamped relevance of States' strategic interests and their explicit protection. My modest proposal is that this ought to be properly analyzed within a conceptual framework based on two fields of study not immediately related to the law, yet subtly affecting it, namely geo-economics and economic intelligence.

As for geo-economics, we can trace its contemporary origins back to a provocative essay by an American scholar, Edward Luttwak, released immediately after the end of the Cold War, focusing on the idea a forced passage from direct wars to conflicts that, because of the disappearance (at least temporarily) of the most visible political profiles, would have arisen in the field of international trade by means of economic competition.

All in all, the proposal was to move from geo-politics to geo-economics. Better said, the latter was considered a new way to develop the first one through "*the admixture of the logic of conflict with the methods of commerce – or, as Clausewitz would have written, the logic of war in the grammar of commerce*"¹³. This bellicose way of thinking seems to have steadily planted its seeds and matured in the wake of the Great Recession; eventually, it also started to provoke some worried alerts by a growing number of commentators, pointing at the need to develop some basic discipline for curbing States' appetites and methods regarding unconventional economic warfare¹⁴.

In my view, the thesis that geo-economics is to be understood as the use of economic tools to achieve geo-political goals can however be accepted only when it is made clear that geographic aspects are not merely a material background of the action, but they do always constitute a fundamental combination of cultural features, from which the potential for action is properly dependent. A strategic approach to the territory and its situation – legal framework included – must be consequently adopted.

This way of thinking seems to naturally align with the classical lesson of Chinese thought on the art of war, as well as with its update available from open source. A concept, allegedly developed within the Chinese military context, comes in handy, namely the one from the *Three Wars* (*San Zhong Zhanfa*). According to its reporters, it aims at directing the joint

available at <https://www.chinalawinsight.com/2017/08/articles/global-network/china-issues-guidelines-on-overseas-investments/#more-13949>; A. KAJA - T. STRATFORD, *China to Broaden Market Access for Foreign Investors in Financial Services*, in *Covington & Burling LLP - Global Policy Watch*, November 2017, available at <https://www.globalpolicywatch.com/2017/11/china-to-broaden-market-access-for-foreign-investors-in-financial-services/>.

¹³ E. LUTTWAK, *From Geopolitics to Geo-Economics. Logic of Conflict, Grammar of Commerce*, in *The National Interest*, vol. 20, 1990, 19.

¹⁴ For instance, a recent position paper connected to the World Economic Forum stated that "*States must develop their rules of the road for economic warfare. When governments use the infrastructure of the global economy to pursue political goals, they challenge the universality of the system and make it more likely that other powers will hedge against it. They could also provoke attacks in retaliation. In the same way that States have developed a series of agreements and conventions that govern the conduct of conventional wars between countries, these principles must be applied to the economic arena*" (M. LEONARD, *5 things to know about geo-economics*, World Economic Forum, February 26, 2015, available at <https://www.weforum.org/agenda/2015/02/5-things-to-know-about-geo-economics/>).

public State and private business agendas within the international arena, in view of acquiring informative and economic resources, as well as for controlling the dominant narrative, along a soft clash that is psychological, media, and legal, at the same time¹⁵.

Regarding the legal side of the battlefield, we rely upon what was already mentioned on the topic of foreign investment controls for moving to a further level, referring here to the growing amount of research related to strategic uses of legal provisions as defensive or offensive instruments, in light of what has been labelled *lawfare*¹⁶. Those who deal with the topic of legal wars usually recall as a typical and recurrent example the use of regulations for imposing economic sanctions; in fact, provided that such measures always need to be enveloped by legal dresses, it is easy to understand the growing attention dedicated to the dress-code¹⁷.

Very recently, a different case might also be quoted, namely the one of the Spanish government, that, in the face of a secessionist project affecting the region of Catalunya, quickly amended the national commercial code in order to simplify the transfer of companies' legal seats. The reform immediately unleashed a massive transfer of legal seats by many important Catalan companies (first of all, financial institutions) from Catalunya to other Spanish regions¹⁸; at present, it is fair enough to say that the secessionist project seems to have failed.

In order to overcome the perplexities that might be raised by the aggressive scenarios evoked above, it is now useful to introduce the second line of thought previously mentioned, *i.e.* the one regarding the complex practices and instruments adopted for acquiring and managing useful economic information within the current geo-economic contexts, better known as economic intelligence¹⁹. The contemporary meaning of this field of research and activities has been primarily shaped by what could well be considered a French

¹⁵ Cf. T. WALTON, *China's Three Warfare*, in *Delex Special Report*, January 2012, 1 ff., available at <http://www.delex.com/data/files/Three%20Warfares.pdf>.

¹⁶ O. KITTRIE, *Lawfare: Law as a Weapon of War*, New York, Oxford University Press, 2016. For a history of the term (as well as a worrying debate around the question "*has the academy already lost control of the concept of Lawfare?*"), see *Is Lawfare Worth Defining? Report of the Cleveland Experts Meeting September 11, 2010*, in *Case Western Reserve Journal of International Law*, vol. 43, no. 1, 2011, 11 ff., available at https://web.archive.org/web/20110807201635/http://www.case.edu/orgs/jil/vol.43.1.2/43_Lawfare_Report.pdf.

¹⁷ According to a recent analysis, "*economic sanctions have been a fixture of U.S. foreign policy for decades, but never have they enjoyed so much popularity as they do today*" (E. FISHMAN, *Even Smarter Sanctions. How to Fight in the Era of Economic Warfare*, in *Foreign Affairs*, 2017, available at <https://www.foreignaffairs.com/issues/2017/9/6>).

¹⁸ Cf. *Real Decreto-ley 15/2017, de 6 de octubre, de medidas urgentes en materia de movilidad de operadores económicos dentro del territorio nacional*, in *Boletín Oficial del Estado*, October 7, 2017, no. 242, section I, 97565 ff., available at <https://www.boe.es/boe/dias/2017/10/07/pdfs/BOE-A-2017-11501.pdf>. A first commentary of the amendment was offered by L. FERNÁNDEZ DEL POZO, *Cambio de domicilio social. Comentario al nuevo artículo 285.2 LSC*, in *La Ley mercantil*, no. 40, 2017, 3 ff.

¹⁹ Related literature is rapidly growing. For an updated quick introduction see S. PASQUAZZI, *Economic Intelligence*, in V. ILARI - G. DELLA TORRE, (eds.), *Economic Warfare. Storia dell'arma economica*, Milan, SISM, 2017, 499 ff., available at <http://www.societaitalianastoriamilitare.org/quaderni/2017%20Quaderno%20Sism%20Economic%20Warfare.pdf>.

school of thought, together with its related broader idea of economic war²⁰. Apart from any possible practice of such war, its most updated, open source theories are indeed provided by a university institution based in Paris, the École de Guerre Économique, publicly operating for twenty years with the declared goal to form economic intelligence experts²¹. As already remarked by other scholars, there might be some risks that the definition of economic intelligence as a specific field of studies could just be a mere new way for conceptualizing old practices of explorations (after all, Marco Polo's renowned book of marvels, *the Million*, could also be seen as a strategic dossier *ante litteram* about the commercial roads and outlets of the Far East). However, it is unquestionable that the interactions between (large) States and (large) companies now have a number of previously unknown channels, opportunities and modes of cooperation in the context of economic/financial competition. In fact, geo-economic interests of such relevant actors are increasingly aligning along a continuum that goes from local (*i.e.* the same country of origin) to global, and way back. Interestingly enough, it seems that the Chinese government and enterprises, notably at the forefront of these strategies, have learned a typical lesson from Western history and its economic doctrines, namely the one about mercantilism, now developing it according to the new scenarios of regional powers²².

After adopting this perspective, all the elements so far invoked eventually seem to nicely fit into the interpretive matrix masterfully developed by Susan Strange regarding international political economy. It seems in fact useful to evaluate political and economic relations in terms of a defined “structural power,” along four dimensions: security, production, finance, and knowledge²³. In order to effectively understand each of these dimensions,

²⁰ Cf. É. DELBECQUE - C. HARBULOT, *La guerre économique*, Paris, PUF, 2011.

²¹ See <https://www.ege.fr/>. About a possible account of the French roots of contemporary economic intelligence, according to a national expert, “at the end of 2003, the nomination of a high civil servant in charge of economic intelligence near the Prime Minister (now under the authority of the Présidence de la République) strongly helped both private companies and State administrations to become aware of the challenges to economic security. At the same time, vocabulary evolved also, shifting from ‘economic war’, ‘competitive intelligence’ and ‘economic watch’ only, to ‘economic intelligence’, which aims to encompass all aspects of the globalized risks and opportunities and that is based on an upstream understanding and a multidisciplinary approach of the threats that need to be addressed. Also, since the French are French, there were a lot of semantic debates on the word ‘intelligence’, which is now accepted in its two meanings: the basic French one, intelligence as the ability to think and analyse, and the British one, which relates to the collection and treatment of information. These debates are more important than they might appear at first glance, since at the beginning the second meaning led to confusion with espionage, thus giving rise to strong criticism and mistrust towards these new approaches” (C. REVEL, *Economic Intelligence: An Operational Concept for a Globalised World*, in *Elcano Newsletter*, 2010, 2, available at <http://biblioteca.ribei.org/1958/1/ARI-134-2010-I.pdf>).

²² For some interesting reading on the issue, see M. WIGELL, *Conceptualizing regional powers’ geoeconomic strategies: neo-imperialism, neo-mercantilism, hegemony, and liberal institutionalism*, in *Asia Europe Journal*, vol. 14, no. 2, 2016, 135 ff., available at <https://link.springer.com/content/pdf/10.1007%2Fs10308-015-0442-x.pdf>; cf. also A. PRAŠCEVIC, *Rebirth of Mercantilism in the Global Economy*, in *Proceedings of the 2nd International Conference on Scientific Cooperation for the Future in the Economics and Administrative Sciences*, Thessaloniki, September 2017, 100 ff., available at https://www.researchgate.net/profile/Kahraman_Kalyoncu/publication/320035987_Din-Iktisat_Iliskisi_Riba_Rehin_ve_Ekonomik_Islem_Kavramlari_Cercevesinde_Bir_Inceleme/links/59ca38e945851556e97df484/Din-Iktisat-Iliskisi-Riba-Rehin-ve-Ekonomik-Islem-Kavramlari-Cercevesinde-Bir-Inceleme.pdf#page=106.

²³ Cf. S. STRANGE, *The Retreat of the State. The Diffusion of Power in the World Economy*, Cambridge, Cambridge University

information and its intelligent management surely are strategic assets. Thus, this should always be borne in mind when assessing acts and actors of the international economic policy, public or private as they are. At the same time, it finally becomes clear how relevant the different legal rules aimed at disciplining economics are, from the ones related to foreign investment controls to those on merger controls according to competition laws. As a matter of fact, they play a fundamental role in the management of at least two of the dimensions mentioned above, namely the ones of production and finance, with direct effects on the other dimensions, security and knowledge.

5. Something like a conclusion

At the end of these brief and open notes, it might sound rather cynical to solve the closing with the ancient Latin motto: *si vis pacem para bellum*, “if you want peace, prepare for war” (even if possibly updated by recalling the contemporary joke that *only the paranoids survive*). At the same time, having dissipated the surrounding noise of populist rhetoric about protectionism, it would be naïve not to interpret the mounting arrangement of special powers, by a number of important legal systems, as a real race for “legal rearmament”, in view of safeguarding essential economic interests. This is indeed a prospect that, like it or not, is an integral part of interstate policy, as newly confirmed also by the EU Commission with its envisaged new trade controls, as well as easily understandable when following some ongoing legal reforms, such as the Italian ones on golden powers mentioned before.

Provided the need for realism, however, it is precisely in the call for peace, implied in the Latin quote, which is believed it is possible to dissolve most of the tensions outlined here above. It is in fact necessary to understand the logic of conflict, and master the grammar of commerce offered by applicable laws, right for playing strategic games in view of reaching cooperative and positive results for those involved. As wisely remarked by Donald Kagan, a renowned scholar of war history, “*a persistent and repeated error through the ages has been the failure to understand that preservation of peace requires active effort, planning, expenditure of resources, and sacrifice just as war does*”²⁴. Let us all be part of a conscious and conscientious effort to turn law and economics away from their offensive misuses, keeping their applications aligned with the pursuit of the largest possible common welfare.

Press, 1996. See also R. GERMAIN, (ed.), *Susan Strange and the Future of Global Political Economy: Power, Control and Transformation*, London, Routledge, 2016.

²⁴ D. KAGAN, *On the Origins of War: And the Preservation of Peace*, New York, Anchor Books, 1996, 567.

