

Italy introduces new economic measures related to COVID-19

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Executive summary

With Decree Law No. 23 of 8 April 2020 (*Urgent measures on access to credit and tax fulfilments for companies, special powers in strategic sectors, as well as interventions on health and work, extension of administrative and procedural terms* - the "Decree"), the Italian Government has announced new business support measures to address the economic crisis triggered by COVID-19.

The main objectives of the Italian Government are to:

- 1) Promote access to credit and support liquidity, export, internationalization and investments (according to *Chapter I* of the Decree)
- 2) Ensure business continuity for companies (according to *Chapter II* of the Decree)

Measures aimed at promoting access to credit and support liquidity, export, internationalization and investments

To achieve the first objective, the Decree provides, *inter alia*:

(a) Support for corporate liquidity, facilitating access to credit through SACE S.p.A.

In order to support and relaunch the Italian economy, Sace S.p.A. (a State-owned Italian company) is empowered to issue guarantees in any form, including counter-guarantees to other public credit guarantee issuing entities

(s.c. Confidi) - at market conditions and in compliance with European Union (EU) legislation - in favor of *banks, national and international financial institutions and others entities authorized to exercise lending activity in Italy*, for loans in any form granted to companies based in Italy. The provision at hand has been approved by the European Commission on 14 April 2020.

The commitments undertaken by SACE *cannot exceed* the maximum total amount of €200 billion, of which, at least €30 billion will be destined to support small and medium enterprises (SMEs), as defined by the European Commission Recommendation n. 2003/361/EC, including the *self-employed workers and self-employed professional Value-Added Tax (VAT) holders*, who have already fully used their capacity to access the SMEs public fund's guarantee, enhanced by virtue of the Decree No. 18 of 17 March 2020.

More specifically, the Decree provides that:

- (i) The **beneficiary company** of the guarantee as of *31 December 2019* must not be qualified as a company "*in difficulty*" according to the definition adopted by the European Union (and, more precisely, by Commission Regulations (EU) No. 651/2014, No. 702/2014 and No. 1388/2014) and - as of *29 February 2020* - must not be present among the "*non performing exposures*" in the banking system, as defined pursuant to EU legislation.
- (ii) The **beneficiary company** of the guarantee issued by SACE must undertake: (x) for itself (as well as for any other company based in Italy that is part of the same group to which the first one belongs) not to approve the distribution of dividends or repurchase the shares during 2020; (y) to manage employment levels through agreements with the unions.
- (iii) The **amount of the loan secured by the guarantee** cannot exceed the greater of the following amounts: (x) 25% of the company's annual turnover for 2019, as shown in the financial statements or the tax return; or (y) an amount equal to the double of the company's personnel costs for 2019, as resulting from the financial statements or from certified data if the company has not approved the financial statements.
- (iv) The **guarantee** is *at first demand, explicit, irrevocable*, in compliance with the requirements of prudential supervisory regulations for the risk mitigation, and that:

- Is issued by *31 December 2020*, for loans with a duration of *no more than six years* with the possibility for companies benefit of a period in which only interests are due *lasting up to 24 months*.
- Can cover only the loans granted to the company *following the entry into force of the Decree*, for capital, interest and ancillary charges up to the relevant maximum guaranteed amount.
- Must be set on the size of the company and covers:

- **90%** of the amount of funding requested, for companies with less than 5,000 employees in Italy and a turnover of less than €1.5 billion.

For these companies, a simplified procedure for accessing the guarantee is also provided. The procedure is divided in three phases: *Phase (1)*: the company interested in obtaining the financing guaranteed by SACE presents to a lender - which can operate and possibly also provide in a coordinated way with other lenders - the request for the financing guaranteed by the State; *Phase (2)*: if the lender approves the financing, it must transmit the request for the issue of the guarantee to SACE (which will have to evaluate the procedure used by the lender and issue a unique code for the identification of the loan and the guarantee); and *Phase (3)*: the lender proceeds with the release of the loan assisted by the guarantee granted by SACE.

- **80%** of the amount of funding requested, for companies with more than 5,000 employees and **turnover** over €1.5 to €5 billion.
- **70%** of the amount of funding requested, for companies with more than 5,000 employees and turnover of over €5 billion.

In these latter cases, the Decree provides that the issue of the guarantee is subject to the decision taken by the Italian Minister of Economy and Finance (adopted on the basis of SACE preliminary appraisal), considering the role that the beneficiary company of the guarantee plays with respect to certain areas such as, for example, technological development, belonging to the logistics and supply network or the impact on critical and strategic infrastructures.

However, it is understood that for identifying the guaranteed amount limit and the relative coverage percentage, reference will be made to the value - communicated by the company to the lender - of the turnover in Italy and the personnel costs incurred in Italy by the company or on a consolidated basis if the company belongs to a group.

(v) The **lenders** must:

- ▶ *Demonstrate* that following the granting of the loan covered by the guarantee, the overall amount of exposures vis à vis the relevant borrower is greater than the amount of exposures held at the date of entry into force of the Decree (net of the reductions in exposures due to payments of amount due in accordance with the relevant facilities agreement as in force before the entry into force of the Decree).
- ▶ *Provide* a periodic report to SACE with the contents, cadence, and the methods indicated by the latter, to find the compliance by the beneficiary companies of the guarantee and by the same lenders of the commitments and conditions indicated above.

(vi) The **annual fees** payable by the companies in connection with the guarantee are the following:

- ▶ *For loans to SMEs*: 25 basis points for the first year, 50 basis points for the second and third year, and 100 basis points for the fourth, fifth and sixth year.
- ▶ *For loans to other enterprises other than SMEs*: 50 basis points for the first year, 100 basis points for the second and third year, and 200 basis points for the fourth, fifth and sixth year.

(b) Further **strengthening of the Fund's Guarantee for SMEs**, already envisaged by Article 49 of the decree-law No. 18 of 17 March 2020 by:

(i) The **increase**:

- ▶ Of the *maximum guaranteed amount* per individual company at €5 million
- ▶ The *percentage of coverage* of the direct guarantee at 90% of the amount of each financial transaction.

(ii) The **extension of the guarantee of the Fund**:

- ▶ To **companies** that:
 - Have a number of employees *not exceeding 499*.
 - Present - on the date on which the guarantee is requested - exposures to the lender classified as "*unlikely to pay*" or "*past due exposure impaired*", on the condition that the classification is not earlier than the date of 31 January 2020 (remaining in any case excluding companies that present exposures classified as "*bad loans*").
 - Have been admitted - after 31 December 2019 - to the *pre-insolvency work out agreement with creditors* with business continuity (according to Article 186-bis of the Italian Insolvency Law), or have entered into *restructuring*

agreements (according to Article 182-bis of the Italian Insolvency Law) or have submitted a *certified recovery plan* (according to Article 67 of the Italian Insolvency Law) provided that, at the date of entry into force of the Decree, their exposures: (x) are no longer in a situation that could qualify them as "*non performing exposures*"; (y) do not present amounts due and unpaid after the application of the measures and the bank - based on the analysis of the borrower's financial situation - can reasonably assume that there will be full repayment of the exposure on its due date.

- ▶ To **new loans** granted to SMEs and *natural persons* carrying out business, arts or professions whose business activities have been damaged by the COVID-19 pandemic (as resulting from self-certified declaration), on condition that these loans provide for:

- The repayment of the principal amount *no earlier than 24 months* from the drawdown of the loan and a *duration of up to 72 months*.
- An amount not exceeding 25% of the amount of the borrower's revenues, as resulting from the last financial statements filed or from the last tax return submitted at the date of the guarantee application, or, for the borrower established after 1 January 2019, from other suitable documentation, such as self-certification (in any case, not exceeding €25,000.00).

For these loans a coverage of 100% of the amount disbursed is expected:

- ▶ To the **financial transactions** already completed and advanced by the lender for no more than three months from the date of submission of the request and, in any case, after 31 January 2020.

In these cases, the lender must send a declaration to the Fund's manager certifying the reduction in the interest rate applied to the beneficiary of the guaranteed loan as a result of the guarantee granted.

Article 13 also provides for special measures:

- (i) For companies that have **revenues not exceeding €3.2 million** and that have been damaged by the COVID-19 emergency (as resulting from self-certified declaration).

These companies will be able to *combine* the guarantee granted by the SME Fund (to cover 90% of the amount disbursed) with the guarantee granted by the Confidi or by other subjects authorized to issue guarantees (for the

remaining 10%). The SME Fund's Guarantee, in any case, cannot be issued for loans of an amount not exceeding 25% of the beneficiary's revenues.

(ii) For **guarantees granted on loan portfolios**

In this regard, the Decree states that *until 31 December 2020*, for guarantees on loan portfolios (even without amortization plan) dedicated to companies damaged by the COVID-19 pandemic and made up of at least 20% of companies with a rating, determined by the applicant on the basis of its internal models at the date of inclusion of the transaction in the portfolio - not higher than the "BB" class of the Standard's and Poor's rating scale, advantageous terms will be applied in terms of the maximum amount of the portfolios, assessment of access to the Fund, coverage percentages of the various tranches of the portfolio.

(c) The **strengthening of public export support** through a co-insurance system under which the commitments deriving from SACE's insurance business are assumed by the State for 90% and by the same company for the remaining 10%.

In addition to the above measures, the Decree also facilitates the signing of contracts relating to banking and financial services using IT or telematic tools. In this respect, the Decree states that the consent given by retail customers via certified e-mail (or through other suitable tools) is to be considered suitable to meet the requirement of the written form provided by the Italian Banking Law under penalty of nullity.

Measures aimed at ensuring business continuity for companies

To achieve the *second objective*, the Decree provides for further measures consisting in:

- (a) The possibility of evaluating the financial statement items for the fiscal year 2020 with a view to **business continuity** (on the condition that it results from the last financial statements closed prior to 23 February 2020).
- (b) The **postponement** of the entry into force of the new corporate crisis and insolvency code (legislative decree no. 14 of 12 January 2019) to *1 September 2021*.
- (c) **Disabling**, until *31 December 2020*:
 - (i) The *reasons of dissolution of the companies* in the case of reduction or loss of the share capital (to avoid that the directors are faced with the alternative

between the immediate wind up - with consequent immediate loss of the perspective of business continuity also for performing companies - and the risk of being exposed to liability for non-conservative management pursuant to Article 2486 of the Italian Civil Code).

- (ii) The provisions of laws providing for the subordination of loans made by shareholders or by entities exercising control and co-ordination activity, i.e. holding companies, in order to incentivize the channels necessary to ensure adequate refinancing of companies.
- (d) In **safeguarding** attempts to resolve the business crisis as an alternative way to bankruptcy (e.g. pre-insolvency work out agreement with creditors and restructuring agreements) which were promoted prior to the occurrence of the COVID-19 pandemic and have concrete chances of success.

Specifically, the measures provided for by the Decree consist in:

- (i) *Six-month extension* of the terms of fulfillment of any obligation provided for by the proposal to creditors made in the context of a pre-insolvency work out agreement with creditors (*concordato preventivo*) or by a restructuring agreement, whose due date falls in the period between 23 February 2020 and 31 December 2021.
- (ii) In relation to the procedures for approval of pre-insolvency work out agreement with creditors or restructuring agreement pending on 23 February 2020, the possibility for the debtor to obtain from the Court *further 90 days* to file a revised proposal of pre-insolvency work out agreement with creditors or a revised restructuring agreement. In this regard, the Decree also specifies that the term starts from the date of the decree with which the Court assigns the term and cannot be further extended.
- (iii) The possibility for the debtor to unilaterally extend of further six months the terms of fulfillment of its pre-insolvency work out agreement with creditors proposal or restructuring agreement pending as of 23 February 2020, through the filing (until the hearing set for the creditors' approval) of a memorandum containing the indication of the new terms and the documentation evidencing the rationale behind the need of such extension.

- (iv) The introduction of a further 90-day term for the filing of a *concordato preventivo* proposal or a restructuring agreement that can be used by the debtor who has already filed a pre-filing in order to obtain a stay of action and a term pursuant to Article 161 paragraph 6 or pursuant to Article 182-bis paragraph 7 of the Italian Insolvency Law.
- (e) **No further bankruptcy proceedings:** in the period between 9 March 2020 and 30 June 2020 the filings for declaration of bankruptcy and the filings for the ascertainment of the state of insolvency for the compulsory administrative liquidation of banks and the extraordinary administration of large companies in crisis cannot be made.

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