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taking you further

COVID-19 in Italy

New dispositions of the
decree on the Covid-19
emergency (D.L. N. 18/2020
C.D. "Cura Italia")



ITALY

The following pages outline the main regulatory developments as a consequence of the measures to face the economic and social impact of COVID-19, in the tax and financial fields, which may have an impact on the business, professional and / or personal activity of all the agents involved.

MEASURES TO SUPPORT LIQUIDITY THROUGH THE BANKING SYSTEM AND FURTHER BENEFITS

Measures in favour of businesses

Art. 49 – Central Guarantee Fund for SMEs

Among the measures aimed at avoiding liquidity crises for companies contained in Title III of the Decree, the art. 49 provides for the strengthening and extension of the use of the Guarantee Fund for SMEs, pursuant to Law 662/1996, through some changes to the ordinary regulations which will remain operational for 9 months from the entry into force of the Decree:

- The **maximum amount guaranteed** has increased to **5 million per individual company**.
- The **guarantee is granted free of charge**, suspending the obligation to pay commissions to the Fund, where applicable suspending the obligation to pay commissions to the Fund, where applicable.
- **Debt renegotiation operations are also eligible for the fund guarantee**, provided that the lender grants new finance for at least 10% of the residual debt.
- The guarantee **will be automatically extended in the event of a moratorium or suspension of financing** related to the COVID-19 emergency.
- The assessment for the access to the Fund is carried out exclusively on the economic and financial module, with the **exclusion of the performance module**, thus **allowing to admit to the Fund also companies that register tensions with the financial system** due to the crisis connected to the epidemic.
- The **non-completion fee is expected to be eliminated** for all transactions below a physiological threshold of deliberate and unfinished transactions.
- **New 18-month loans less one day** of an amount **not exceeding 3 thousand euros are eligible for the guarantee of the fund**, in favor of natural persons carrying out business activities, arts or professions subjected whose business activity was damaged by the COVID emergency -19 as per self-certified declaration. In favor of these beneficiaries the intervention of the Fund is granted free of charge and without evaluation.
- For **real estate investment** transactions **in the tourism-hotel and real estate sectors**, with a **minimum duration of 10 years and for an amount exceeding 500,000€**, the **guarantee of the Fund can be combined** with other forms of guarantee acquired on loans.
- For **guarantees on specific loan portfolios** dedicated to companies damaged by the COVID-19 emergency, **or belonging, for at least 60%, to specific sectors / chains affected** by the epidemic, **the share of the junior tranche covered by the Fund may be high by 50%**, which could be increased further by 20% in the event of intervention by additional guarantors.

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- The **maximum amount for microcredit** operations is raised to **40,000€ euro** (art. 111 of Legislative Decree no. 385 of 1993), with relative update of the Ministerial Decree October 17, 2014, n. 176.
- The **provisions** relating to **the Central Guarantee Fund for SMEs** are **also extended to the agriculture and fisheries sector**, through the specific guarantees issued by ISMEA (Institute of Services for the Agricultural Food Market), which will have **80 million € to be used for these guarantee measures**.
- All the terms referring to the **administrative obligations** relating to the operations **supported by the guarantee of the Fund** are **extended for three months**.

The interventions of the regulation are financed for a total of 1.5 billion in relation to the year 2020, **in addition to the 80 million allocated to ISMEA**.

In the sense of providing businesses (especially small ones) with new opportunities to find financial resources at low cost, it is to be welcomed the **reduction of the fees for access to the Fund and for the failure to complete the operations**, which in 2019 resulted in burdens on businesses of almost 43 million. The increase to **5 million of the maximum guaranteed amount**, in addition, **will restore financing capacity also to companies that had exhausted the guarantee spaces on the Fund**.

In this regard, given the centrality in the national production system of SMEs, it would perhaps have been appropriate to extend **the possibility of application over a different time span, calibrating**, if necessary, **the amplitude according to the multiplying effect** of the impacts of specific product and economic sectors in which the parties involved operate:

According to some analysis of the Development and Cohesion Department, in fact, **the multiplying effect of direct guarantees is on average equal to 16**. Taking into account a **coverage rate of 80%**, in the intentions of the Government, **the measure in question should handle a total amount of around 24 billion**. In addition, since it is a **revolving instrument, as a result of the gradual repayment of the loans**, it is possible to reuse several times the assigned resources. Furthermore, by adding to the **resources already available** (approximately 1.1 billion) **and the "repayments"** expected for expired instalments (equal to approximately 1 billion) the allocation envisaged by this decree, it should guarantee a **significant increase in the funding admitted to the Fund**.

BENEFICIARIES

In relation to the measure analyzed above, **the beneficiaries are represented by micro, small and medium-sized enterprises**, defined by the European Commission Recommendation n. 2003/361 / CE of 6 May 2003 on the basis of the following requirements:

Type of enterprise	Average n. Unit of Labour / year	Total balance sheet		Annual revenue
MICRO	< 10	≤ 2 million	↔ O	≤ 2 million
SMALL	< 50	≤ 10 million	↔ O	≤ 10 million
MEDIUM	< 250	≤ 50 million	↔ O	≤ 43 million

From a numerical point of view, therefore, based on the ISTAT 2019 annual report, **the audience is very large, given that SMEs represent 99.9% of the total companies in Italy**, with over 95% (about 4 million) of economic operators below 10 employees.

FINANCIAL SUPPORT MEASURES FOR MICRO, SMALL AND MEDIUM-SIZED ENTERPRISES

Suspension of the deadlines, in relation to the non-impaired / performing debts, towards banks and financial intermediaries from which **Italian micro-enterprises and SMEs (par. 5) which, at the date of entry in force of the Decree, had obtained loans or credit lines can benefit** (by making a request to the creditor). With respect to these loans and credit the measure establishes the following:

- ➊ **Opening of credit**, for the amounts existing **on February 29, 2020, or if subsequent to the date of the Decree**, it is established that **there can be no annulment until September 30, 2020**, both with reference to the part of the loan that has been used and the part still to be used.
- ➋ **Contracts for non-installment loans with a contractual expiration before 30 September 2020**, for which it is planned **an extension until 30 September 2020**. Equal treatment is also provided for all ancillary elements relating to the main contract. As clarified in the explanatory report, all this will not lead, from an actuarial point of view, to any increase in costs, neither for the intermediary, let alone for the beneficiary (company). It is also clarified that all administrative costs remain at the expense of the intermediary.
- ➌ **Mortgages and other loans with reimbursement in installments**, even if completed through the issue of agricultural loans, with installments or leasing installments that **expire before 30 September 2020**. The measure establishes the **suspension of payments until 30 September 2020** together with the ancillary elements, **without the possibility**, in actuarial terms, **that this may entail additional costs for the intermediary and for the client companies**. The reimbursement plan of the installments or payments subject to suspension is deferred.

The **administrative obligations**, also in this case, remain **at expenses of the intermediaries**. This is without prejudice, as indicated in this provision, that **companies can also benefit from the suspension of the unique capital share**.

During the moratorium period, intermediaries **must suspend the calculation of the days of persistence** of any possible expiration or digression.

Companies must self-certify that they have temporarily suffered a shortage of liquidity as a direct consequence of the spread of the epidemic to obtain a moratorium on loans that at the date of publication of the Decree are not reported by the intermediary in one of the situations which qualify the credit as "non-performing" (paragraph 4). **The suspension of payments deprives banks of the possibility of independently assessing whether or not to consent to changes to the contractual conditions** based on the economic and financial situation of the debtors.

The moratorium, which does not generate new or greater charges for banks (therefore respects the principle of actuarial neutrality) **and which regards non-impaired loans, is neutral with respect to the qualifications of intermediaries on credit quality**, in the sense that it does not determine an automatic change in the classification according to credit quality of the exposures subject to the moratorium transactions, unless there are new objective elements that induce the intermediaries to review the judgment on the credit quality of the debtor during the moratorium period.

FINANCIAL SUPPORT MEASURES FOR MICRO, SMALL AND MEDIUM-SIZED ENTERPRISES

In fact, in order to mitigate the economic effects of a possible deterioration in the quality of the loans subject to a moratorium, **the provision of possible assistance from the Guarantee Fund for SMEs** (which partially covers the exposures concerned) **is associated with the support measures**. Paragraph 6 establishes that the operations subject of the support measures are admitted, without evaluation, to the guarantee of a specific special section of the **Central Guarantee Fund, with a budget of 1.73 billion**. **The guarantee only partially covers the possible damages suffered by the banks** as a consequence of the exceptional event, according to the following amounts:

- **33% for the greater uses**, on the date of 30 September 2020, compared to the amount used on the date of publication of the Decree under examination of the loans referred to in paragraph 2, letter a);
- **33% for loans and other financing** whose expiration is extended pursuant to paragraph 2, letter b);
- **33% for the single installments of mortgages and other loans reimbursed through installments or leasing installments** that are due within September 30, 2020 and which have been suspended pursuant to paragraph 2, letter c).

The moratorium can also be applied to loans distributed **with third party funds** (implying that the related funding contract is automatically extended in relation to the extension of the financing operation, under the same conditions as the original contract, without prior authorization from the aforementioned subjects third parties) **and subsidized financing** (upon prior communication to the incentive body).

METHODS AND TERMS FOR ACTIVATING AND ENFORCING THE GUARANTEE

Paragraphs 7 to 11 specify the **methods and terms for activating and enforcing the guarantee**, as well as the minimum percentage of provisions to cover the risk.

This moratorium of financing is included in the measures issued by the government in response to the effects produced by the COVID-19 epidemic, in compliance with the provisions of article 107 of the Treaty on the Functioning of the European Union (paragraph 1), recognizing it as "exceptional event and serious disturbance of the economy". **The purpose of the measure is to "avoid that a very strong drop in demand [...] has permanent effects on the activity of a large number of companies and is amplified by financial mechanisms".**

The measure in question also follows the **CNDCEC** (National Council of Certified Public Accountants and Legal Auditors) proposal referred to in no. 6 of Annex 2 of the Information Report n. 21/2020 of 10 March 2020, and **is to be welcomed as it is aimed at protecting companies from any financial gap situations connected to the reduction of activities** following the emergency of COVID-19.

In a scenario of negative shock - albeit temporary - both on the supply and demand side, in fact, **it is necessary to avoid that the effects are permanent on a large number of economic operators.**

In this regard, the data shown in the Technical Report indicate that the **overall amount of loans to SMEs** that would benefit from the moratorium is estimated at around **219 billion**, divided as follows:

- **97 billion euro** for **credit lines in bank account** (of which 66 used)
- **60 billion euro** for **financing related to advance payments on debt securities** (used for 35)
- **29 billion** for **other short-term loans**
- **33 billion** for **loan installments and expiring leases**

While it is positive the possibility of leaving to the companies the option to use the moratorium only for the principal amount or for the entire instalment, only the limited temporal articulation of the measure (**about six months**) raises some doubts. As previously pointed out, in fact, given the strong relevance of the damage suffered by Italian SMEs due to the health emergency, **also in this case it would have been appropriate to extend the benefits provided by the regulation, calibrating, if necessary, the extension, according to the multiplier effect of the impacts of specific product and economic sectors** where the parties involved operate.

In this sense, referring to what is reported in the explanatory report in relation to mortgages and "other loans reimbursed through instalments", **the payment of the instalments rescheduled between the parties could lead to the presumption of a one-year extension of the suspension**, as also proposed in the ABI moratorium and in the requests of the CNDCEC.

METHODS AND TERMS FOR ACTIVATING AND ENFORCING THE GUARANTEE

BENEFICIARIES

With regard to the audience of **beneficiaries**, it is believed that **it also includes freelancers and self-employed workers**: recommendation 2003/361 / EC, in art. 1 of the annex, in fact, defines the company as "any entity, regardless of the legal form covered, which carries out an economic activity. In particular, entities that carry out an artisan activity or other activities on **an individual** or family basis, partnerships or associations that carry out an economic activity are considered as such".

In this sense, also **the law of 28 December 2015, n. 208** (financial law 2016), regarding the **"Operational plans ROP and NOP of the European Social Fund (ESF) and the European Regional Development Fund (ERDF)"**, **has extended access "to freelancers, as they are equivalent to small and medium-sized enterprises as operators of an economic activity"**, regardless of the legal form covered, according to title I of the annex to the Recommendation 2013/361 / EC of 6 May 2013 of the Commission, and article 2, point 28) of the Regulation (EU) n. 1303/2013 of the European Parliament and of the Council, of 17 December 2013".

Therefore, considering the critical context in which this Decree wishes to pursue its objectives, **a restrictive interpretation of the audience of beneficiaries would be inconsistent**, with respect to which a clarification seems appropriate.