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STUDIO LEGALE E TRIBUTARIO

PROVISIONS REGARDING EXTRAORDINARY AND URGENT MEASURES TO COPE WITH THE EPIDEMIOLOGICAL EMERGENCY CAUSED BY COVID-19

UPDATE TO THE CONVERSION LAW NO. 18 OF MARCH 17, 2020, "*CURA ITALIA*"

Update of May 1st, 2020

BUSINESS ISSUES

Facilities on rents of commercial premises (Article 65)

In previous *Newsletter* of March 13 reference was made to the interpretation problems connected to the hypothesis of suspension and/or reduction of rents related to premises where businesses involved in the prohibition measures are conducted.

In this regard, Article 65 of the *Cura Italia* Decree, confirmed upon conversion, has granted those operating businesses a tax credit for the year 2020 amounting to 60% of the total rent – related to the month of March – for properties falling within the land register category C/1 (stores and shops), in order to contain the negative effects arising from prevention and containment measures related to the epidemiological emergency caused by COVID-19.

The aforementioned tax credit can be used only for offsetting and does not apply for the activities indicated in Annexes 1 and 2 of the Prime Ministerial Decree of March 11, 2020 (for instance those deemed as essential, such as pharmacies and basic food outlets).

It should be noted that the aforementioned rule does not expressly render the tax credit conditional on actual payment of the rent (in March) by the lessee, adding further aspects for consideration regarding the aforementioned interpretative issues (even in relation to potential economic and tax losses for the lessor), which require a thorough examination of the specific contractual clauses.

Article 65 substantially remained unchanged upon conversion, adding also paragraphs 2 *bis*, 2 *ter* and 2 *quater* (whose examination is deepened in this Newsletter section on the tax law's issues). Anyway, such additional paragraphs, do not solve the interpretation doubts already dealt with, which have been partially clarified by the Newsletter No. 8 of April 3, 2020 of the Italian Income Revenue Authority, that points out that *"The facility under examination aims at containing the negative effects arising from containment measures of the epidemiological emergency towards those operating businesses, in which a property in land register category C/1 results leased. Even if the provision makes reference, in general terms, to 60% of the amount of the rent, the same aims at restoring the person from the charge incurred and represented by the same rent, so that, in accordance with such purpose, the aforementioned tax credit will accrue after that the payment of the same rent has been carried out".*

Measures in favour of agricultural and fisheries sector (Article 78)

Upon conversion, paragraphs 2 *bis*, 2-*ter* and 2-*quater* have been added to Article 78 of the *Cura Italia* Decree. It deals with provisions of particular interest from the business point of view, that were not contained in the *Cura Italia* Decree before its conversion into law.

In particular, paragraph 2-*bis* provides that the subordination of purchase of agri-food, fishing, and aquaculture products to non-compulsory certifications referred to COVID-19 which are also not indicated in supply agreements for the delivery of products on regular basis prior to the same agreements, is an unfair commercial practice forbidden in the relationships between buyers and suppliers, pursuant to the European Parlament and Council Directive 2019/633 of April 17, 2019.

The provision of paragraph 2-*ter* is of particular interest; by virtue of this latter the provision of paragraph 2-*bis* constitutes an overriding mandatory provision, pursuant and for the purposes of Article 17 of the Law No. 218 of May 31st, 1995, in relation to the buying and selling of national agri-food products.

Finally, paragraph 2-*ter* provides for the application of an administrative fine from Euro 15,000 to Euro 60,000, unless the act does not constitute an offence, for the contracting-party (that is not final consumer) that breaches the obligations set out in paragraph 2-*bis*.

It clearly deals with a regulation aiming at protecting the exports of Italian goods. On the website of the Ministry of Agricultural Policy an e-mail especially created for reporting such practices is shown at the *link*

https://www.politicheagricole.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/15271.

As mentioned above, the provisions of paragraph 2-*ter* is particular interesting as it states by law the nature of overriding mandatory provision of a provision of domestic law, a choice that, according to the writer's opinion, is unique regarding private international law.

The solution for the supervening performance impossibility (Article 88 and 88*bis*)

The conversion law of the *Cura Italia* Decree provided significantly for the regulation related to the applicability of the solution of termination due to supervening impossibility pursuant to Article 1463 of the Italian Civil Code to contracts terminated for cultural, recreational or tourist purposes.

Upon conversion, indeed, the legislator chose to split the regulation contained in the original Article 88, dealing separately with what provided for the refund of titles of purchases of tickets for shows, museums and other cultural venues (current Article 88) by the regulation concerning the termination of contracts regarding travel documents, residence permits and tourist packages, which nowadays finds itself systematically in the new Article 88 *bis*.

Refund of titles of purchase of tickets for shows, museums and other cultural venues (Article 88)

As anticipated, pursuant to the new wording of Article 88 carried out upon conversion, the rule is nowadays dedicated to regulate the possibility of application of the solution of termination of the contract due to supervening performance impossibility pursuant to Article 1463 of the Italian Civil Code (with thesubsequent obligation to refund any payment already made in the modalities described below) limited to the purchase contracts of valid tickets for accessing to shows of any kind, including the cinematographic and theatrical performances, and tickets for entrance to museums and other cultural venues, whose execution became impossible as a result of the suspension of such events/activities initially introduced (by the Prime Ministerial Decree of March 8, 2020) until April 3rd and after extended by the additional emergency provisions that succeed one over the other over time (lastly from Prime Ministerial Decree of April 26) up to next May 17.

The "new" Article 88 essentially confirms the right of all individuals purchasing the above-mentioned valid tickets for access to submit – within thirty days from the entry into force of the *Cura Italia* Decree or by the different date of entry into force of provisions successively adopted – proper application for refund to the event organiser person, even by means of sales channels used by this latter, attaching the related title of purchase. The event organiser, after having verified the supervening performance impossibility and, subsequently, the non-usability of the title of purchase subject of the application for refund, shall provide to refund the purchaser by issue of a *voucher* of the same amount of the title of purchase, to be used within one (1) year from the issue.

Refund of travel documents, residence permits and tourist packages (Article 88 *bis*)

As already mentioned upon conversion of the *Cura Italia* Decree-Law the legislator chose to share in two different provisions the legislation related to the termination of the contract pursuant to Article 1463 of the Italian Civil Code, dedicating expressly the new Article 88 *bis* exclusively to the regulation of the termination of the contracts for air, rail and sea transport, in inland or terrestrial waters stipulated by persons subject to the measures restricting the freedom of movement, as identified in the Decree-Law No. 9 of March 2nd, 2020.

More specifically, the new rule confirms, at first paragraph, the extension of the remedy of the termination of a contract for supervening impossibility pursuant to Article 1463 of the Italian Civil Code, even to contracts "*for air, rail, sea transport, in inland or terrestrial waters, to accommodation stipulated contracts and to stipulated contracts of tourist packages"*, for which the supervening performance impossibility occurred as a result of the measures restricting the freedom of movement of individuals, adopted pursuant to and following the entry into force of the Decree Law No. 6 of February 23rd, 2020 and No. 19 of March 25, 2020.

Same first paragraph (letters from a) to f)) also specifies the categories of individuals for whom the remedy can be applied, that, as a matter of fact, aims first of all at protecting the interests of those individuals subject to measures restricting the personal freedom because of (i) the (ascertained or possible, pursuant to letters a) and c) of the first paragraph) infection occurred with subsequent obligation of quarantine or trustworthy house stay with active surveillance by the health authority or hospitalization, (ii) because of the arriving from or departing to areas affected by the infection, (iii) because of the destination towards national areas and not affected by the infection, as well as (iv) for all those individuals that planned a movement to participate in "*open competitive exam or public selection procedures, in events or initiatives of any kind, in events and in any type of meeting in public or private place, even of cultural, recreational, sport and religious kind, even if these latter take place in closed places opened to the public, if cancelled, suspendend or deferred by the authorities".*

With regard to the modalities to exercise the right to reimbursement, the captioned provision, in a similar way as what laid down in previous Article 88, provides that the individuals entitled (as punctually listed above) must exercise their right within the thirty-day deadline from the termination of the hindering situations (referred to in paragraph 1, letters from *a)* to *d))* or from the date of cancellation, suspension or deferment of the competitive exam or selective procedure, of the event, of the initiative or of the event (referred to in paragraph 1, letter *e)*) or even, from the date fixed for the departure (paragraph 1, letter *f)*), to communicate to the carrier or to the accommodation facility or to the organiser of tourist packages to occurrence of one of the hindering situation foreseen by the rule, attaching the documentation proving the travel documents, the reservation of stay, the contract of tourist package or the registration to the open competitive exam/to the educational event. The carrier, within thirty days from the communication, shall provide to the reimbursement of the amount paid by the individual even by issuance of a *voucher* of the same amount to be used within one (1) year from its issuance.

The provision also points out that the withdrawal from the contracts in question may be exercised also by the carrier, giving prompt communication to the purchaser and refunding him, within the following thirty days, of the amount paid for the travel document or issuing a *voucher* of the same amount to be used within one (1) year from its issuance.

Similarly, it is provided that the accommodation facility that has suspended or ceased the activity because of the ongoing epidemiological emergency may act and communicate to the purchasers the withdrawals from reservations but, in this case, the refund may be made, as well as through the issue of a *voucher*, also through direct refund of the amounts paid, namely offering the purchaser an alternative service of equivalent, higher or lower quality with refund of the price difference.

The tourist packages are covered by the specific regulation laid down in sixth and seventh paragraphs, whereby what provided for by Article 41 of Legislative Decree No. 79 of May 23rd, 2011 is expressely derogated (i.e. Tourism Code), so that, both the purchasers of planned stays *"in the period of hospitalization, of quarantine with active surveillance, of trustworthy house stay with active surveillance, that is of duration of the epidemiological emergency caused by COVID-19 in the areas affected by the infection"*, and the organisers for the hypothesis of *"contracts of tourist package with foreign countries destinations where*

disembarkation, docking or arrival are hindered or forbidden due to the epidemiological emergency caused by COVID-19,

and however when the execution of the contract is totally or partially hindered by measures adopted because of such emergency by national, international or foreign Countries authorities", shall lawfully exercise the withdrawal upon issue / offer of an alternative package of equivalent or higher or lower quality with refund of the price difference or of the direct reimbursement or, otherwise, issuing, even through seller agency, a *voucher* to be used within one (1) year from its issuance, of the same amount to the due refund. The reimbursement is paid and the *voucher* is issued upon receipt of the reimbursements / *vouchers* by individual service providers and however no later than sixty days from the scheduled starting date of the travel.

The following paragraph eight provides that the solution of the termination pursuant to Article 1463 of the Italian Civil Code may be applied also to travels and to initiatives of education hindered as a result of the state of emergency extending in such circumstance, the applicability of the remedies set forth by the aforementioned Tourism Code that is recognising to the purchaser a *voucher* of amount equal to the cost incurred, to be used within one (1) year from the issuance. Even in this case, the organiser shall make the refund or issue the *voucher* upon receipt of the reimbursements or of the *vouchers* by individual service providers and however no later than sixty days from the scheduled starting date of the travel.

On the contrary, the refund of the payment shall be made always through refund of the amount paid, without any issuance of *voucher*, when the travel or the initiative of education concerns the kindergarten or the final classrooms of the nursery school and elementary school (primary school) and of the middle school and high school (secondary school). In this latter case, with effect for the school year 2020/2021, the relationships established from February 24, 2020 between educational institutes and organisers, for which the parties shall modify, by mutual agreement, dates and modalities of stay without any termination of the relationship, are expressly excluded.

In the above-mentioned cases (*i.e.* withdrawal from tourist packages from the purchaser or from the organiser and travels and education initiatives) the legislator states that the refund, in any of its kind, must be paid in favour of the individual who carried out the payment and also in the case in which the same was made by means of a travel agency or by means of *"reservation portal"*.

Finally the provision also sets forth that, beyond the hypothesis expressly covered by paragraphs from 1 to 7, all relationships concerning the contracts in question and established with effect from March 11, 2020 to September 30, 2020 throughout the whole national territory (including payments to be made abroad and payments in favour of contracting-parties coming from abroad), in the case in which the payments are not made because of consequences due to the epidemiological state of emergency, the consideration already received may and must be returned through issuance of a *voucher* of amount equal to the cost incurred and valid for one (1) year from its issuance.

Finally, it should be noted that, by express provision, (i) the issuance of the *voucher* provided as means of refund of travel documents as per this Article does not require any form of acceptation by the recipient and (ii) the provisions set out in the mentioned Article *"represent overriding mandatory provisions pursuant to Article 17 of the Law No. 218 of March 31st, 1995, and to Article 9 of the (EC) regulation No. 593/2008 of the European Parliament and Council of June 17, 2008"* of which these will be intended to be applicable even in case of litigations containing elements in connection with the set of rules of other States and for which exists the Italian jurisdiction.

Exclusion of liability for default (Article 91)

Article 91 of the *Cura Italia* Decree entitled "*Provisions on delays or defaulting on contracts arising from the implementation of containment and advance payment for public sector contracts"* introduces a measure, fully confirmed upon conversion, that appears to apply even beyond the restricted scope of public sector contracts (referred to in the heading of said article, perhaps however with reference to the provisions set out in the second paragraph of the same article) and clarifies how compliance with the containment measures deployed to avoid the spread of contagion among population, (also) affects the criteria of assessing a debtor's liability for default or delayed payment, pursuant to Articles 1218 and 1223 of the Italian Civil Code, establishing applicability of the provision even in relation to the contractual clauses that provide for the application of any revocation or penalties for late payment or default. The matter will necessarily be subject to subsequent analysis and interpretation.

The conversion Law of Decree Law No. 18 of March 17, 2020, as said, has substantially confirmed what already provided for by the rule in question, without making any significant amendment to the above-mentioned provision.

Suspension of the deadlines of beginning and end of works in the contracts for the performance of construction services (Article 103)

Another interesting addition for the experts of commercial law is represented by the provision referred to in paragraph 2-*ter* under Article 103.

The provision in question indeed provides that in contracts between private parties concerning the execution of construction works, valid between January 31st, 2020 (date in which the state of emergency was declared) and July 31st, 2020, the deadlines of beginning and end of works are extended for a period of duration equal to the duration of the extension referred to in paragraph 2, that is, from what it seems resulting from the letter of the rule, until the ninetieth day following the declaration of cessation of the state of emergency. Paragraph 2-*ter* also provides that *"in derogation of any different contractual provision, the principal is obliged to pay the works carried out until the date of suspension of works".*

Law No. 27/2020 of conversion of Decree-Law No. 18/2020 "*Cura Italia*" – Measures of financial support to micro, small and medium enterprises affected by the epidemic Covid-19 (Article 56)

The conversion Law No. 27/2020 of the *Cura Italia* Decree has not, substantially, changed the provisions contained in Article 56, but it clarifies more correctly all regulatory provisions included therein to "financing entities". In such a way, the conversion law has cancelled possible doubts on the applicability of the full Article 56 to financing entities different from banks and financial intermediaries (as for example, AIF alternative investment funds of credits, ELTIF).

Article 56 states measures of financial support to micro, small and medium enterprises that suffered from a lack of liquidity connected to the spread of the pandemic Covid-19, that shall be granted, upon occurrence of specific conditions, by the financing entities. In this regard, Article 56 also provides government support measures in favour of this latter, through the possibility to activate the guarantee of the Central Fund for SMEs[1].

The financial support laid down by the provision consists first of all of the possibility for the companies concerned to request the financing entities a moratorium of payments due for the instalments due up to September30, with subsequent postponement of the reimbursement plan of the loan for a corresponding period.

In particular, the loans, in any form, fall within the scope of application of the measure, included mortgage and financial leasing contracts, that provide a rescheduling plan of the refund (repayment schedule). The provision points out that the companies which require the application of the measure with reference to said types of loans may require the suspension of the refund of the full amount of the instalment or of the rent (including both the amounts repayed in principal, and of the interests), or of the payment limited to the part of the amount into the capital account, without suspending, therefore, the refund of the interests provided by the reimbursement plan.

As regards the non-instalment loans (the loans to refund at the deadline through a single payment including the capital and the interests accrued) the provision sets forth the extension of the deadline of the reimbursement to September 30, 2020, if the deadline of the loan was foreseen before the above-mentioned date. The provision therefore does not include in the measure the non-instalment loans whose deadline is foreseen after September 30, 2020.

Finally, measures are provided for also with reference to uncommitted credit facilities, namely to credits revocable from the intermediary in any moment and also without a just cause, as well as to loans granted upon advance payments on future receivables, these latter used frequently in the schemes of continuous granting of companies' receivables. On these latter types of credits, the Decree lays down the prohibition of revocation by the financing entity, both for the used part (the amounts already granted) and for the unused part (the amounts already granted to the recipient, but not used yet), up to September 20, 2020. Therefore, if already granted by the financing entity, such loans remain fxed and at the same conditions until such date. Paragraph 4 of the provision n question, points out also that loans for which companies require the application of the above-mentioned support measures must not be classified by the financing entity as impaired credit exposures[2]. Therefore, in order to

[1]The measure of the Central Guarantee Fund for SMEs is a State aid of exceptional nature, applicable on the basis of what laid down by Article 107 paragraph 2 of TFUE which establishes the compatibility with the treaty of the aids to face the damages caused by natural disasters or other exceptional occurrences.

[2]In detail, pursuant to Article 47-*bis*, paragraph 3, of the (EU) Regulation No. 575/2013 (CRR) within the framework of impaired exposures the following exposures are included:

a) Exposures for which it is deemed that these have been caused by a default; b) exposures for which it is deemed they have suffered from a decrease in value pursuant to the applicable accounting regulation; c) exposures on test, pursuant to paragraph 7 of the same Article, if additional granting measures have been agreed or if the exposures expired from more than 30 days; d) exposures in form of commitment that, if used or otherwise activated, would not be fully refunded without enforcement of secured guarantees; e) exposures in the form of financial guarantee that should probably activated by the guaranteed part, including the cases in which the guaranteed exposure meets the criteria in order to be considered as impaired.

benefit from the moratorium, the requesting company must, for example, be up to date with the payments of the instalments planned by the loan for which it is required the suspension.

Micro, small and medium enterprises established in Italy, as defined by Article 2 of the Recommendation No. 2003/361/EC of May 6, 2003 of the European Commission, may benefit from the support measures laid down by Article 56 of the Decree.

More specifically, "SMEs" are considered enterprises employing less than 250 employees, whose annual turnover does not exceed €50 million or whose total of annual financial statements does not exceed €43 million. More in particular, "micro-enterprises" are considered as enterprises employing less than 10 employees and generating an annual turnover not exceeding €2 million, whilst "small enterprises" are considered enterprises employing less than 50 employees and generating an annual turnover not exceeding €10 million. The so called "sole traders" fall under the categories of enterprise identified by the provision, as, pursuant to the mentioned Commission Recommendation, in general terms, the entities carrying out an artisan activity or other individual or family-run activities, partnerships or associations carrying out an economic activity, are considered as "enterprises".

Enterprises intending to avail themselves of the support measures laid down by Article 56 of the Decree must send to the financing entity a formal request for the application of the measures, attaching also a declaration with which they self-certify to have suffered from a temporary lack of liquidity as direct consequence of the spread of the pandemic. The self-declaration is submitted pursuant to Article 46 of the Decree No. 445 of the President of the Republic of December 28, 2000 (substitutive declaration of certifications) and does not require other supporting documentation in order to provide documentary evidencein relation to what stated by the enterprise[3]. Therefore, the enterprise does not need to prove its financial difficulty, and no thresholds or minimum amounts are required to access the support measures, being sufficient the above-mentioned self-certification. It should be noted that, however, the information declared must be true, without incurring the penalty provided for by Article 76 of the same Decree of the President of the Republic, which penalizes the false declarations also with sanctions of penal nature.

It should be noted that, under the above-mentioned conditions, the financing entities are required to grant the applicant company the financial support measure required.

With partial coverage of the exposures of the financing entities and with the purpose to mitigate the economic effects of a possible worsening of the credit quality resulting from the application of the mentioned support measures, a special section of the Central Guarantee Fund for small and medium-sized enterprises (the "Fund"), with an endowment of €1.73 billion was established.

As said, in order to mitigate the risk of a credit crunch during the period of epidemiological emergency, the operations subject to measures of financial support, referred to in paragraph 2 of Article 56, are hence covered by the guarantee of a specific special section of the Fund.

While, as a rule, the percentage of coverage and the maximum amount guaranteed supported by the Fund are established after an assessment of the creditworthiness. In order to benefit from such new form of guarantee convering the exposure resulting from the

For the purposes of letter a), as regards cases where the body has in its financial statements exposures towards a debtor expired for more than 90 days that represent more than 20% of the total of exposures on financial statements towards the same debtor, all exposures on and out of the financial statements towards said debtor are considered impaired.

[3] In particolar, Article 46, paragraph 1, letter o), of Decree of the President of the Republic No. 445/2000 provides that: "the followings states, personal qualities and facts: [omitted] o) income or economic situation even for the purposes of the grant of benefits of any type envisaged by special laws are proved with declarations, even simultaneous to the application, signed by the party concened and produced in replacement of the normal certifications.

granting of measures to support SMEs, the financing entity must forward an electronic request containing the indication of the maximum amount guaranteed. Through the Fund's online portal (https://www.fondidigaranzia.it/presentazione-domandaonline/), banks and authorized intermediaries can submit application for admission to the guarantee, carry out all communication after the admission envisaged by the legislation and complete the procedures for the activation and settlement of the guarantee.

First of all, in order to access the electronic procedure of application for admission to the guarantee, it is necessary to request specific credentials through the sending of the "Form of request of the credentials for the log in to the electronic procedure for the requesting parties" available on the same Fund's online portal. The Form, stamped and signed by the legal representative of the requesting party, must be sent to the certified e-mail address: fdgaccount@postacertificata.mcc.it. After having received the credentials it will be possible to carry on with the sending of the application for the activation of the guarantee.

The guarantee for the support measures offered covers only partially the damages suffered from the financing entities as a result of the epidemic. In particular, the Fund's special section, with an endowment of €1.73 billion, guarantees for an amount equal to 33 per cent:

- The greater use, as of September 30, 2020, compared to the amount used as of the date of publication of the *Cura Italia* Decree of the loans referred to in letter a) of paragraph 2 of Article 56;
- The loans and other financings whose deadline is postponed by virtue of letter b) of paragraph 2 of Article 56;
- The single instalments of mortgages and of other financings envisaging a repayment by instalments or of lease payments about to expire within September 30, 2020 and that have been suspended as provided for in letter c) of paragraph 2 of Article 562.

With reference to financings provided with funds of third parties, the implementation of the moratorium entails that the related financing contract is extended automatically in relation to the extension of the financing operation, at the same conditions of the original contract, without prior authorisation by the above-mentioned third parties. For the subsidised loans, however, a communication to the financing entity providing such loans is required. Finally, modalities and terms, on the basis of which the guarantee may be enforced, are indicated.

The guarantee has subsidiary nature, therefore the enforcement of the same may be carried out only if, in the eighteen months after the end of the support measures, that is as of September 30, 2020, the executive procedures have been started in relation to:

i. total or partial default of the exposures arising from uncommitted credit facilities and for the loans granted upon advance payments on existing receivables;
ii. the omitted payment, even partial, of the amounts due for capital and interests related to non-instalment loans;
iii. default of one or more instalments of loans or of lease payments suspended.

The intermediaries can send to the Guarantee Fund for SMEs the request of enforcement of the guarantee concerning the loans and other financings, accompanied by an estimate of the final loss incurred by the Fund. As regards the receivables by instalments, the guarantee can be activated, with the same prerequisites outlined above, within the limits of the amount of the instalments or of the lease payments suspended up to September 30, 2020. The Guarantee Fund, after having verified the legitimacy of the request, shall update the related funds and shall settle in favour of the financing entity, within 90 days, an advance payment equal to 50% of the lower amount between the maximum amount guaranteed from the special Section envisaged by paragraph 6 of Article 56, and 33 per cent of the final loss esteemed chargeable to the Fund.

The financing entity recipient of the guarantee can request, within 180 days from the completion of the executive procedures, the settlement of the residual amount due as application of the enforcement of the Fund's guarantee. Within thirty days from the date of receipt of the documented request of enforcement, the Fund of guarantee provides for the payment of the amount due to the beneficiaries of the guarantee.

Law No. 27/2020 converting "*Cura Italia*" Decree-Law No. 18/2020 – Measures of financial support to micro, small and medium sized enterprises affected by the epidemic COVID-19, located in the most affected Municipalities (Article 49-*bis*).

Law No. 27/2020 converting *Cura Italia* Decree introduced a new Article 49-*bis*, in order to provide a further financial support to SMEs located on the territories of one Municipality most affected by the epidemiologic crisis. In particular, the aforementioned Article 49-*bis* provides that for a period of 12 months from March 2nd, 2020, in favour of SMEs, with headquarters and local branches located in the territories of the municipalities identified in Annex 1 to the Decree of the President of the Council of Ministers March 1st, 2020[4], the guarantee of the Central Guarantee Fund for SMEs is granted for free and with priority on other measures, for a maximum amount guaranteed to each company of €2.5 millions. The maximum percentage of coverage for the measures of direct guarantee is equal to 80 per cent of the amount of each financing operation.

For the reinsurance measures, the maximum percentage of coverage is equal to 90 per cent of the amount guaranteed by Confidi (Credit Guarantee Consortia) or by other guaranteed fund, provided that the guarantees issued by the same, do not exceed the maximum percentage of coverage of 80 per cent.

The Article in question also provides a potential extension within the scope of territorial application of the above-mentioned support-measures, taking into account the exceptional economic impact suffered because of the geographical location adjacent to the same areas, or of the belonging to a production chain particularly affected, even only in particular areas. Such extension shall be ordered with a specific Decree. For the purposes set forth by Article 49-*bis* further €50 million have been allocated to the Central Guarantee Fund.

Law No. 27/2020 converting *"Cura Italia"* Decree-Law No. 18/2020 – Other measures of financial support to companies affected by the epidemic Covid-19 introduced by the above-mentioned conversion law

Suspension of mortgages for economic operators victims of usury (Article 54-*quater*)

Law No. 27/2020 converting *Cura Italia* Decree provides for the suspension of the mortgage instalments for 2020, granted by the Solidarity Fund for the victims of usury, referred to in Article 14 of Law No. 108 of March 7, 1996. Therefore, the amortisation plans originally established will be extended. Moreover, Article 54-*quater* provides that also unpaid instalments expired on February and March 2020 are suspended and may be reimbursed.

Measures in favour of the beneficiaries of special rate mortgages (Article 72-*ter*)

The Article in question provides that the companies recipient of special rate mortgages granted by the National Agency for attracting the investments and the development of the company – Spa-Invitalia, with headquarters or local branches located in the territories of the Municipalities most affected by the epidemic Covid-19, as identified pursuant to Article 49-*bis*, may benefit from the suspension of 12 months of the payment of the instalments expiring no later than December 31st, 2020 and of a corresponding extension of the duration of the amortisation plans.

[4] Municipalities: 1) in the region of Lombardy: a) Bertonico; b) Casalpusterlengo; c) Castelgerundo; d) Castiglione D'Adda; e) Codogno; f) Fombio; g) Maleo; h) San Fiorano; i) Somaglia; l) Terranova dei Passerini. 2) in the region of Veneto: a) Vo'.

The above-mentioned benefits also apply in the event that, Invitalia has already adopted the termination of the subsidized-loan contracts because of the arrearage of the borrower, as long as no credit collection actions have been already taken.

Support measures for agricultural sector (Article 78)

Article 78-*bis* introduced a new paragraph 4-*bis*, which provides the granting of loans, by the Revolving Fund to support enterprises and research investments established by the Ministry for Agricultural, Food and Forestry Policies with zero-rate, in favour of agricultural enterprises located in the municipalities mostly affected by the epidemiological emergency as identified pursuant to Article 49-*bis.* The mortgages must have a duration not exceeding fifteen years and aiming at paying the financings required by the above-mentioned enterprises with private financing entities, existing as of January 31st, 2020.

The above-mentioned provision may be applied only after the adoption by the Ministry for Agricultural, Food and Forestry Policies of a specific decree establishing the criteria and the modalities of granting of the above-mentioned mortgages.

The new paragraph 4-*sexies*, lays down for all agricultural enterprises referred to in Article 2135 of the Italian Civil Code, either individually or collectively, that the mortgages and the other financings aiming at meeting the needs of management or of improving the production structures, existing as of March 1st, 2020, even performed through the issuing of agricultural loans are renegotiable. On this point, it is considered that the mentioned financings are renegotiable through the above-mentioned revolving fund.

TAX ISSUES

Professionals – continuous and coordinated contracts – *one-off* compensation payment (Articles 27 and 28)

Upon conversion into law, Articles 27 and 28 have not been particularly amended (only small clarifications). Therefore, a granting of a **compensation of €600** for March 2020 for the benefit of self-employed professionals who have an active VAT number on February 23rd, 2020 and individuals with continuous and coordinated contracts in force on the same date, who are registered under the separate Management regime pursuant to Article 2, paragraph 26, of Law No. 335 of August 8, 1995, and who are not members of pension or other compulsoru social security schemes, is confirmed. The same allowance is granted to individuals with continuous and coordinated contracts who carry out activities for the benefit of amateur sport clubs and other associations. The compensation is paid – within the limits of the amounts allocated – by INPS, on application.
It is expressly stipulated that compensation is not included as income.
The regulation also grants a one-off compensation payment of €600 to self-employed workers registered under the AGO special management regime (i.e. contracted artisans, traders, growers, etc.) who are not pension holders and not registered under other compulsory social security schemes. The compensation is paid – within the limits of the amounts allocated – by INPS, on application.
Such measure cannot be combined with the one-off compensation granted to professionals and workers with continuous and coordinated contracts.

First-time buyer mortgages – VAT (Article 54)

The conversion law confirms the **suspension of mortgage instalments on the first home** for self-employed professionals and indipendant practitioners of a liberal profession; the measure – which will remain **in force for 9 months** – is subject to the presentation of a **self-certification** by means of which it is evidenced to havce suffered from a loss, in the quarter after February 21st, 2020 and prior to the application, or in the shortest span of time between February 21st, 2020 and the date of the request if before one quarter, namely a decrease of their own turnover exceeding 33% of the turnover of the last quarter 2019 as a result of the closure of or of the limitation of their own activity carried out as implementation of the provisions adopted by the compent authority for the coronavirus emergency.

Further clarification have been also added for those admitted to benefit from this provision, as well as some specific limits.

Suspension of the executive procedures on first home (Article 54-ter)
The introduction of a new Article aims at suspending, for the duration of **six months** from the date of entry into force of the law converting Decree-Law No. 18/2020, all executive procedures for property attachment concerning the main residence of the debtor.

Financial support measures for companies – so-called impaired receivables (Article 55)

Upon conversion, the rule aiming at encouraging the transfer of impaired receivables with the option of **converting to a tax credit** a **quota of deferred tax assets (DTAs)**, in an **amount equal to 20% of the nominal value of the transferred receivables (up to a maximum of €2 billion)** is confirmed**.**

In particular, for companies which, **by 31 December 2020, factored receivables** against **defaulting debtors**, a quota of DTA referring to the following may be converted to a tax credit:

- **losses that can be carried forward** which are not yet calculated as a reduction of taxable income pursuant to Article 84 of the Italian Consolidated Tax Law (TUIR)
- the amount of notional yield in excess of the total net income referred to in Article 1, paragraph 4, of the Decree-Law No. 201 of December 6, 2011, converted with amendments by Law No. 214 of 22 December 2011 (**ACE**);

which on the date of factoring of receivables **have not been calculated yet as a reduction, benefited from or deducted from taxable income.**

The measure under examination does not apply to factoring of receivables between companies that are linked by control relationships pursuant to Article 2359 of the Italian Civil Code and to companies controlled, even indirectly, by the same individual.

Chance to make payment by a different deadline (Article 60)

The provision in question iconfirmed upon conversion, therefore, the deadlines for payments to public administrations, including social security and welfare contributions and INAIL premiums, due on March 16, 2020 are extended to March 20, 2020. It should be noted however that such deadline has been further extended to April 16, pursuant to Article 21 of Decree-Law No. 23/2020, the so called *Liquidità* (Liquidity) Decree.

Suspension of payments of withholding taxes, of social security and welfare contributions and compulsory insurance premiums (Article 61)

Upon conversion, Article 61 has been adjusted both for recipients and for (broadened) terms of regulatory effectiveness. In particular, for certain individuals identified below, with tax domicile, registered office or operating headquarters in the territory of the State, the following time-limits are suspended: (i) the terms related to payments of withholding taxes at source, referred to Articles 23 and 24 of the Decree No. 600/1973 of the President of the Republic (that is solely withholding taxes on employees earnings and similar), expiring in the period **from March 2nd, 2020 to April 30, 2020**; (ii) fulfillment of requirements and payments of social security and welfare contributions and compulsory insurance premiums, expiring from **March 2nd, 2020 to April 30, 2020**; (iii) payments for VAT **expiring on March 2020**.

The list of individuals eligible for suspension has been partially amended compared to those set forth by the original Decree and includes: tourism and accommodation companies, travel agencies and tour operators, national sport federations, sports promotion bodies, professional and amateur associations and clubs, as well as operators managing stadiums, sports facilities, gyms, clubs and dancing facilities, fitness and bodybuilding, sports centres, swimming pools and swimming facilities; organisers of theatres, concert halls, cinemas, including ticketing services and the activities supporting artistic displays, as well as, discos, dance halls, nightclubs, gaming rooms and biliard rooms; organisers of lottery bettings; gambles; including the management of related machines and devices; organisers of courses, fairs and events, including those of artistic, cultural, recreational, sport and religious character; persons managing catering activities, ice cream shops, pastry shops, coffee shops and pubs, organisers of museums, libraries, archives and historic sites and monuments, as well as botanical gardens, zoological gardens and natural reserves; persons who manage nursery schools and daily assistance services for children with disabilities, educational and teaching services and and nursery schools, primary and secondary educational services, professional training courses, sailing, navigation and flight schools releasing licences or commercial licences, professional driving schools for drivers; persons who carry out social work activities without accommodation for the elderly and disabled; spa companies laid down in Law No. 323 of October 24, 2000 and physical well-being centres; persons who manage entertainment or theme parks; persons who manage bus, railway, maritime or airport stations; persons who manage services of transport of goods and terrestrial, air, maritime, river, lake and lagoon transport of passengers, including the management of funicular railways, cable cars, cableways, chairlifts and ski-lifts; persons who manage rental services of terrestrial, maritime, river, lake and lagoon means of transport; persons who manage rental services of sport and recreational equipment or facilities or equipment for events and shows; persons who carry out driving activities and assistance to tourists; owners of bookshops that not belong to the publishing groups managed directly by the same; non-profit organisations of social utility referred to in Article 10 of the Legislative Decree No. 460 of December 4, 1997, enrolled in the corresponding registers, volunteering organisations enrolled in the registers of regions and autonomous provinces referred to in Law No. 266 of

August 11, 1991 and social promotion associations enrolled in the national, regional registers and in the registers of the autonomous provinces of Trento and Bolzano referred to in Article 7 of Law No. 383 of 7 December 2000, that carry out, exclusively and principally, one or more general interest activity envisaged by Article 5, paragraph 1, of the Code referred to in Legislative Decree No. 117 of July 3rd,2017.

To be eligible for suspension, compliance with the regulations is necessary.

For these persons, **payments** and obligations are fulfilled, without application of penalties and interests, in a single payment **by March 31st, 2020**, or by **payment in up to a maximum of 5 monthly instalments** of equal amount from May 2020. For sport federations suspended payments shall be carried out in a single payment by **June 30, 2020** or by payment in up to a maximum of 5 monthly instalments of equal amount from June 2020. No reimbursement will be made of amounts already paid.

Provisions concerning deadlines related to the pre-filled income tax return 2020 (Article 61-*bis*)

For 2020, the deadline for the pre-filled declaration related to incomes generated on 2019, the deadline of April 30 is extended to **May 5, 2020.**

Suspension of payments (Article 62)

Suspension of **payments due from March 8, 2020 to March 31st,2020** for taxpayers who accrued in the previous tax period **revenues and payments of no more €2 million** is confirmed.

More specifically, suspension concerns not only the **payments of VAT, additional personal income tax (IRPEF) and withholding tax at source,** but also **social security contributions** and **compulsory insurance premiums** (by way of example, it should be noted that payments related to corporate income tax (IRES) and local tax on production (IRAP) are not suspended.

Suspended payments shall be **made in a single payment by May 31st, 2020**. The option to **pay the amounts in 5 monthly instalments**, is however available from May 2020.

The suspension of VAT payments is not subject to the quantitative limit of €2 million in volume of revenues or fees for those who run businesses, or who are artists or professionals in the provinces of Bergamo, Cremona, Lodi and Piacenza. Conversion law adds to the above-mentioned provinces also that of **Brescia**.

Suspension of other tax fulfilments (Article 62)

Suspension of **tax fulfilments due from March 8, 2020 to March 31st, 2020** different from payments and from the carrying out of withholding taxes at source and of deductions related to regional and municipal additional amounts is confirmed.

The **fulfilments** shall be made, without penalty, by **June 30, 2020**.

This includes filing of the 2020 VAT returns, which normally becomes due on April 30. Moreover, by way of example, the filing of tax returns (IRES) and tax on production (IRAP) for entities with tax period not coinciding with the calendar year, the deadline for which it would fall within the above-mentioned suspension period is also suspended.

Carrying out of withholding taxes (Article 62 paragraph 7 - Abrogated)

Paragrah 7 of Article 62 of Decree-Law No. 18/2020 that provides the payment by the recipient of withholdings not made by the employer by May 31st, 2020 has been abrogated by Article 19 of Decree-Law No. 23/2020 (the so-called *Liquidità* (Liquidity) Decree).

In accordance with Article 19 of Decree-Law No. 23/2020 the amounts received between **March 31st, 2020 and May 31st, 2020**, by individuals with revenues or fees not exceeding **€400,000,** are not subject to withholding taxes under Articles 25 and 25-bis of Presidential Decree No. 600/1973 by the withholding agent, against presentation of an appropriate declaration by the recipient.

Individuals who incurred salaried employment expenses in the previous month may not benefit from this provision.

Witholding taxes must be **paid in a single instalment, by July 30, 2020**, by the recipient. However, the option of benefiting from the payment by instalments, paying the amounts in **5** equal **instalments** from the same month of July 2020 is also available.

Extension of the deadlines of technical and administrative requirements related to cableway installations, lifts and escalators in public service and to lifting plants of people or things in private service (Article 62-*bis*)

Technical and administrative requirements related to cableways installations, lifts and escalators in public service and lifting plants of people or things in private service **are postponed of twelve months**, if it is not possible to make all verifications and to grant authorisations by the competent surveillance authority **within the deadlines set forth by the concerned decree**, without prejudice to the certification by the director or by the person in charge of the business about the occurrence of the safety conditions for public business.

Bonus for work carried out in the workplace (Article 63)

Upon conversion, a bonus of €100 is granted on March to employees who cannot benefit from the so-called "smart-working", to be calculated in proportion to the number of working days at the workplace, was confirmed.

The bonus is automatically identified by the withholding agent and does not contribute to the formation of income.

The bonus is paid to persons whose total income in the previous year did not exceed €40,000.

Withholding agents recover the bonus paid through the clearing house, according to procedures that will be defined later.

Environmental remediation tax credit (Article 64)

Upon phase of conversion, it is confirmed the payment of a tax credit equal to 50% of the costs incurred for remediation of the environment and work facilities, up to a maximum of €20,000, to those who run businesses or who are artists or professionals. The tax credit is granted until the maximum amount of €50 million is fully taken up for the year 2020. A subsequent decree of the Ministry of Economic Development and the Ministry of Economy and Finance will govern the procedures for obtaining the aforementioned tax credit.

Tax credit on lease agreements (Article 65)

The granting to business operators of a **tax credit equal to 60% of the amount of rent**, related to the month of **March 2020**, for real estates in the land register category **C/1** is confirmed.

Paragraph 2-*bis*, introduced upon conversion, points out that the above-mentioned credit does not contribute to the formation of income for the purposes of income taxes and on value of production for the purposes of regional tax on productive activities and is not relevant for the purposes of the relationship referred to in Articles 61 and 109, paragraph 5 of the Decree No. 917/1986 of the President of the Republic (TUIR)

Deduction of charitable donations (Article 66)

The Article remais substantially unchaged. The only news concerns the inclusion among recipients of the **religious institutions civilly recognized.**

Charitable donations in cash and in kind, made by natural persons and non-commercial entities to finance **COVID-19 emergency containment and management** initiatives give entitlement to a deduction from the gross tax with the purposes of the **income** tax **equal to 30%** in an amount not exceeding €30,000.

Charitable donations in **cash** and in **kind,** to support the measures to combat the epidemiological emergency of COVID-19, made by **persons with corporate income,** are **deductible from business income** for corporate income tax (IRES) and regional production (IRAP) purposes, **under the conditions laid down in Article 27 of Law No. 133/199 (i.e. totally in accordance with the conditions laid down in the aforementioned legislation) during the year in which they are carried out.**

Disbursement must be made with traceable tools so that the recipient of the donation can be identified.

Suspension of periods of assessment and time-limits for responding to requests for a ruling (Article 67)

The provision is not substantially changed upon conversion. Indeed, deadlines from **March 8, 2020 to May 31st, 2020** for **settlement, audit, inspection, collection and litigation** by the tax offices remain **suspended**.

Due to the general reference to assessment activities, also the deadlines for negotiated assessment procedures must be included in the suspension.

The deadlines for **providing responses to requests for appeals and tax advice** are also suspended for the same period.

Upon conversioni the provision that allowed to the offices the extension of the deadlines of two years for the notification of deeds expiring by December 31st, 2020 was abrogated.

On the contrary, it was provided that the suspension of the deadlines concerns the same revenues subject to the suspension of the deadlines for the payment of levies but exclusively for a correspondant period of time.

Suspension of payment periods for records and enforceable investigations (Article 68)

The deadlines remain **suspended for payments due from March 8, 2020 to May 31st, 2020** related to:

- **notices of payment** issued by collection agents,
- **enforceable investigation notices** issued by the Revenue Agency,
- **debit notices** issued by social security entities,
- **enforceable investigation notices** issued by the Italian Customs and Monopolies Agency,
- **Injunctions** and **enforcement notices** issued by local authorities.

Payments must be made, in a **single** instalment, by **June 30, 2020: this provision gives rise to great confusion because it effectively seems to assimilate the benefit of suspension with a cause of forfeiture of the existing option to pay by instalments.**

However, the following must be paid **by May 31st, 2020:**

- the instalment for the so-called "scrappage-*ter*" which expired on February 28, 2020;
- the "balance and write-off" instalment due on March 31st.

TAX ISSUES

Upon conversion paragraph 2-*bis* was introduced; this latter provides that, as regards natural persons who, on **February 21st, 2020** have with their residence or operating headquarter in the territory of municipalities identified in Annex 1 to Prime Minister's Decree of March 1st , 2020, and concerning different entities than natural persons that, at the same date of February 21st, 2020, had the registered office or the operating headquarter in the same municipalities, **the deadlines of suspensions** start from **February 21st, 2020** and not from March 8, 2020.

Statement on waiver of suspensions (Article 71)

The possibility to **ask for the notification** of the **payment made** to the Ministry of Economy and Finance, for taxpayers that **do not avail themselves of one or more of the facilities for suspensions of payments** pursuant to the Decree, but rather than carry out all or some of the suspended payments, remains unchanged.

Upon conversion, it is pointed out that by means of the Decree of the Minister of the Economy and Finance the procedures with which the Italian Income Revenue Authority issues the certification of the statement, that may be used by taxpayers **for commercial and advertising purposes** will be defined.

Anti-wastefulness donations for the relaunch of the social solidarity (Article 71-bis)

The provision introduced upon conversion of Decree-Law No. 18/2020 amends Article 16 of Law No. 166/2016 and broadens the objective scope of goods that, is transferred free of charge to specific entities and under specific conditions recognised by the provision, are not relevant for VAT purposes.

Suspension of hearings and postonement of deadlines (Article 83)

The initial postponement on the court's motion of all hearings set on April 15, 2020, has been postponed **to May 11, 2020.**

All civil and criminal proceedings pending before all judicial offices (without prejudice to specif exceptions set forth by the same provision) are involved.

For the same period **the deadlines for carrying out any action in the context of the same proceedings, including introductory formalities are suspended.**

The provisions mentioned above also apply to proceedings before **tax commissions, including actions at all stages of tax hearings.**

Suspension deadlines add to the ordinary deadlines, as it occurs in the case of the suspension due to the holiday days (August 1st- August 31st), and for previous extraordinary circumstance (i.e. when pending litigations are settled).

Despite the Italian Income Revenue Authority expressed a favourable opinion, doubts remain on the suspension even of deadlines (90 days) of a possible assessment with adhesion as it deals with an administrative authority. As the consequence of a possible "mistake" could entail the inadmissibility of the appeal because submitted late, prudentially it is not convenient to consider the suspension of 90 days in the hypothesis of proceedings without assessment.

In the event that, calculating the deadline backwards, this falls into the period of suspension, the activity or the hearing from which the deadline starts is postponed in order to fulfil its compliance.

Extension of deadlines in the insurance sector (Article 125 paragraphs 2 and 2-*bis*)

The extension of further 15 days of the deadline, pursuant to Article 170-*bis*, paragraph 1 of Legislative Decree No. 209/2005 (normally 15 days), by which the insurance company keeps the guarantee provided under the previous insurance contract until the new policy enters into effect, is confirmed. Upon conversion into law, the clarification that such further deadline is valid for expired contracts and contracts not renewed yet and for contracts expiring in the period between **February 21st, 2020** and **July 31st, 2020** was introduced**.**

Furthermore, always upon conversion, paragraph 2-*bis* of Article 125 is introduced; this latter provides, upon request of the insured, that compulsory insurance contracts for civil liability resulting from the circulation of motor vehicles and boat may be suspended, for the period required by the same insured and **up to July 31st, 2020**. Suspension applies from the day in which the insurance company received the request of suspension from the insured and **up to July 31st, 2020.**

Insurance companies **cannot apply penalties or charges** of any type to the detriment of the insured requesting the suspension and the duration of the contracts is postponed to a number of days equal to those of suspension without charges for the insured.

Extension of special measures on social shock-absorbers (Articles 19 – 22)

In addition to the provisions on **special redundancy fund wage integration fund** fully confirmed, subparagraphs, respectively 10-bis and quarter of Article 19 and 7bis of Article 20, introduced upon conversion, provide: (i) for employers with headquarters in the municipalities located in the red zones as qualified by the Prime Ministerial Decree of March 1st , 2020 (ii) for all companies, but limited to employees resident or domiciled in the above-mentioned zones and finally (iii) for employers who are always located in the original red zones and that are receving an extraordinary wage integration benefit the possibility to submit (within determined limits of expense) a further application for granting the benefit of wage integration or of access to the cheque with a special single cause "Covid-19 - emergency" for an additional period of three months.

Article 19-*bis*, also introduced upon conversion into law, allows to renew or extend fixed-term contracts, even for staff leasing purposes, during the periods of enjoyment of social shock absorbers.

This allowed to avoid that short-term workers with expiring contract (even staff contract), in particular with reference the so-called contracts "without no specified reason" that cannot last more than 12 months, because of the termination of their employment relationship, would loss the wage integration benefit.

On the basis of the provisions of Article 19-*bis*, companies will have the possibility to continue the contract, both in the extension form and in the renewal form. Companies will also have another advantage: in case of renewal the so-called "stop and go" of 10 days (20, if the previous employment relationshop had a duration of more than six months) before the signing of the new contract will not be applied.

The new provision, during the benefit of wage integration, and with reference to duties referred to suspended working positions, does not allow to start *ex novo* (from scratch) fixed-term employment relationships with persons who previously did not have any contractual relationship with the employer.

50% paid parental leave (Article 23)

No change, without prejudice to the clarification that the abstention right arises provided i) that in the household there is not another parent who benefits from income support tools ii) and as an alternative that there is not another unemployed parent.

24 additional days in 2 months for allowances pursuant to Law No. 104 (Article 24)

No changes

Leave and allowance for employees in the public sector, as well as accredited private healthcare sector – bonus for the purchase of childcare services (Article 25)

No changes

Active surveillance of employees in the private field (Article 26)

No changes

Professional allowances, persons with continuous and coordinated contracts, agricultural, entertainment, seasonal and tourism workers – allowances are not cumulative (Articles 27-31)

Article 44 *bis*, introduced upon conversion, grants an additional monthly allowance equal to €500, and for a maximum of three months, in favour of coordinated and continuous collaborators, of holders of agency relationships and of commercial trade representation and of self-employed workers or professionals including company's owners, registered to the general compulsory insurance, as well as to separate management and who, carry out their working activity as of February 23rd, 2020 in the municipalities identified in Annex 1 to the Prime Ministerial Decree of March 1st , 2020 (i.e. red zones) or are resident or domiciled therein at the same date within the limit amount of 5.8 million for this year.

Extension of deadlines for submission of applications for unemployment benefits, NASpI - DIS-COLL (Articles 32-33)

No changes

Extension of forfeiture deadlines for pension and social security (Articles 34 and 37)

No changes

Smart-working (Article 39)

The conversion Law extended the validity of Article 39 – provided by Decree-Law up to April 30, 2020 – for all the time of duration of the state of emergency caused by Covid-19.

The provision sets forth that, until April 30, 2020, disabled workers pursuant to Article 3, paragraph 3 of Law No. 104/92, or workers who have a disabled person in their household covered by the provision, have the right to smart working. Such right is conditional solely on the compatibility of smart working with the actual performance of each individual's work. On the other hand, in the second paragraph, the provision gives a right of priority for smart working to workers who, having applied for it, are suffering from documented serious diseases which reduces their capacity for work.

In general terms, the provisions of Decree-Law 8.3.2020 (Article 2, first paragraph, letter r) apply to the preferential use of smart working, whenever possible, purely by unilateral decision or without the worker's consent, throughout the national territory and until July 31st, 2020.

The conversion law introduced a paragraph 2*bis* to Article 39 by which the right mentioned at first paragraph (subjective right to smart working) is extended to immunodepressed individuals and the rights referred to in second paragraph (entitlement to priority for accessing to smart working) to families living with immunodepressed persons.

Prohibition on dismissal (Article 46)

Suspension of dismissals for economic reasons is confirmed, except for the hypothesis in which the withdrawal concerns the particular case of the so called "change of tender" and the employee recipient of the dismissal measure is rehired after contextual succession of a new contractor by law, after contractual and collective provisions or after specific clause inserted in the reference tender contract.

Air transport (Article 79)

No changes

PRIVACY ISSUES

Provisions on the processing of personal data in the emergency context (Article 17-*bis*)

Specific "*Provisions on the processing of personal data in the emergency context*", have been introduced – without particular clamour – through the insertion in the text of legislation of a new Article 17-*bis* with which, as a matter of fact, the legitimacy of a temporary limitation of the rights of interested parties "*for reasons of public interest in the sector of publich health and, in particular, to guarantee the protection from the health emergency of cross-border nature determined by the spread of COVID-19 through appropriate prevention measures, as well as to insure the diagnosis and the healthcare of infected people or the emergency management of the National Health Service"* was acknowledged.

Until the end of the state of emergency approved by the Council of Ministers on last January 31st, therefore, some persons, offices and public and private facilities, identified at paragraph 1 of the provision as operating for various reasons in the field of national civil protection service, of the Ministry of Health, of the Italian Institute of Health and of the national health Service, or appointed to monitor and to guarantee the execution of containment measures referred to in Decree-Law No. 19 of 25 March 2020, "*even for the purpose to ensure the most effective management of flows and of the interchange of personal data",* can make the processings – including the communication among them - of personal data - even of particularly sensitive nature referred to in Articles 9 (particular categories) and 10 (criminal convictions and crimes) of the GDPR – which result necessary for the fulfilment of the functions assigned to it.

The above-mentioned processings have legitimacy in consideration of internal emergency legislation, even in the absence of the consent of the party concerned, pursuant to the provision of Article 9, paragraph 2, letters g), h) and i)[5], and of Article 10 of GDPR[6], as well as of Article 2-*sexies*, paragraph 2, letters t) and u), of the Code set forth in Legislative Decree No. 196 of June 30, 2003 (Privacy Code) [7], expressly mentioned by Article 17-*bis* in question.

The provision requires, in any case, that the processing of personal data concerned are carried out in compliance with the principles referred to in Article 5 of GDPR (i.e. accuracy, transparency, purposefulness and lawfulness of purposes, adequacy and pertinence) and adopting appropriate (technical and organizational) measures for the protection of the rights and freedom of the parties concerned.

It should be noted that , pursuant to paragraphs 4 and 5 of Article 17-*bis*, the same above-mentioned parties, furthermore:

(i) *"Having regard to the necessity to temper the needs of management of the ongoing health emergency with that concerning the safeguard of confidentiality of the parties concerned"* may grant authorisation to the processing of data to people who operate under their authority with simplified modalities and even orally;

[5] that respectivly provides the cases in which: "g) the processing is necessary for reasons of public interest relevant on the basis of European Union or of Member States law, that must be proportionate to the pursued purposes, to comply with the essence of the right to the data protection and to provide appropriate and specific measures to protect the fundamental rights and the interests of the party concerned; h) processing is necessary for the purposes of preventive medicine or occupational medicine, assessment of the employee's capacity to work, diagnosis, assistance or health or social therapy or management of systems and health or social services on the bases of the European Union or Member States law or in accordance with the contract with a health professional, except for the conditions and the guaratees referred to in paragraph 3; i) processing is necessary for public interest reasons in the sector of public health, as the protection from severe threats for health of cross-border nature or the guarantee of high standards of quality and safety of health assistance or of medicines and of medical equipments, on the basis of the European Union and Member States law which provides appropriate and specific measures to protect the right and the freedom of the party concerned, in particular the professional secrecy"

[6] "the processing of personal data related to criminal offences or to crimes or to connected safety measures on the basis of Article 6, paragraph 1, must be carried out only under control of the public authority or if the processing is authorized by the European Union or by the Member States law which provide appropriate guarantees for rights and freedoms of the parties concerned. A possible full register of criminal convictions must be kept only under the control of the public authority".

[7] that rispectively provide the cases of "t) administrative and certifying activies related to activities of diagnosis, assistance or health or social teraphy, including those related to organ and tissue transplantation as well as human blood transfusions; u) assignments of National Healthcare Service and of entities operating at health field, as well as assignments of health and safety at the workplace and safety and health of population, civil protection, safeguard of life and physical integrity".

(ii) "*In the ongoing emergency context*", pursuant to Article 23, paragraph 1, letter e) of the GDPR, may omit the information due or provide a simplified information, with prior oral communication to the parties concerned by the limitation (without prejudice to the provisions of Article 82 of the Privacy Code that regulates the information in relation to emergencies and to needs of health care and physical integrity).

It is also provided that, if strictly necessary, for the purposes of carrying out activities connected to the management of health emergency, even the communication of the above-mentioned personal data to additional (not further described) public and private parties and, even the spread of personal data different from those referred to in Articles 9 and 10 of GDPR will be possible.

It is also pointed out that, at the end of the state of emergency, the above-mentioned parties shall adopt suitable measures to attribute the processings carried out in the context of the emergency *"to the field of the ordinary competences and of the rules governing the processings of personal data".*

The reading of the rule in question, therefore, requires an in-depth reflection concerning the potential consequences of its provisions, above all in light of the perspective implementation of widespread clinical screenings and/or "smart" technologies for tracking and for detection of contacts considered at risk.

Covid-19 Warning system referred to in Article 6 of Decree Law No. 28 of April 30, 2020

With regard to this latter point, it should be pointed out that with Article 6 (headed *"Covid-19 Warning system")* of Decree-Law No. 28 of 30 April 2020,– among others – appropriate ***"urgent measures for the introduction of Covid-19 Warning system"*** establishing *"a national single platform for the management of the warning system of persons, who, for this purpose, have installed, on a voluntary basis, a specific* ***application on mobile phones"*** with the only purpose to alert people who have been in strict contact with persons who resulted positive and protect their health through the envisaged prevention measures (without prejudice to the fact that the lack use of app shall not entail any prejudicial consequence and shall ensure the compliance with the principle of equal processing) have been provided. Moreover, in accordance with the above-mentioned provision, the Ministry of Health, as data controller, shall carry out a specific privacy assessment, and adopt technical and organisational suitable measures to guarantee an adequate level of security, after having consulted the Italian Data Protection Authority and guarantee a set of legal protections for the rights of the persons concerned (as, for example, adequate privacy policy to users before the activation of the application, minimisation of processed data regarding the above-mentioned purposes, anonymisation or pseudonymisation of data, exclusion of geolocation of single users, simplified exercise of the rights conferred to the persons concerned by GDPR).

The use of the application and of the platform, as well as any processing of personal data shall end upon termination of the state of emergency and however no later than December 31st, 2020 (with cancellation or definitive anonymization of all processed personal data.

Provisions on the conduct of company shareholder meetings (Article 106)

Law No. 27/2020 converting the *Cura Italia* Decree, has not changed the provisions contained in Article 106 of this last Decree aiming at facilitating the carrying out of meetings of company shareholder, banks and mutual insurance meetings. On this point, reference is made on the comment contained in our previous Newsletter of March 18, showed hereinafter. The only novelty introduced by the conversion law regards the extension of the provisions of Article 106 of the *Cura Italia* Decree even to associations and foundations governed by the Italian Civil Code.

Entities laid down in Article 104, paragraph 1 of Legislative Decree No. 117 of 03.7.2017 (Code of the Third Sector)

Article 106 will expressly not apply to the entities referred to in Article 104, paragraph 1 of Legislative Decree No. 117 of July 3rd, 2017 (Code of the Third Sector): non-profit organization (ONLUS) referred to in Article 10 of the Legislative Decree No. 460 of December 4, 1997; the voluntary organizations enrolled in the registers referred to in law No. 266 of August 11, 1991; and the social promotion associations enrolled in the national, regional registers, and in the registers of the autonomous provinces of Trento and Bolzano provided for in Article 7 of Law No. 383 of December 7, 2000.

In derogation to the provisions of Article 2364, second paragraph of the Italian Civil Code (which provides that an ordinary shareholders' meeting is called at least once a year within 120 days of the end of the financial year) and in derogation to the provisions of Article 2478 *bis* of the Italian Civil Code (which sets the deadline for submitting the financial statements to shareholders within 120 days of the end of the financial year) all companies are allowed to call a shareholders' meeting to approve the financial statements within 180 days of the end of the financial year.

In order to facilitate the holding of meetings, with regard to joint stock companies, limited parterships, limited liability companies and cooperatives and mutual insurance companies – votes may be expressed electronically or by correspondence and meetings may be held via telecommunications systems, including in derogation from the provisions of the Articles of Association.

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