

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

Update of March 30, 2020

**FINANCIAL-BANKING ISSUES
LABOUR LAW ISSUES**

Note: Article 56, paragraph 6 and the following of the Law Decree “Cura Italia” of March 17, 2020:

1. Preamble

This note aims at providing some indications on the new particular form of public guarantee referred to in Article 56, paragraphs 6 and the following of Decree Law of March 17, 2020, No. 18 (the so called “Cura Italia” Decree).

In particular, such guarantee, granted free of charge, was provided for as form of **countermeasure to financial support measures**, listed at paragraph 2 of the same Article 56, that banks and financial intermediaries must provide to micro, small and medium enterprises affected by the epidemic of COVID-19.

In accordance with the above-mentioned paragraph 2 of Article 56, indeed the SME¹ established in Italy may avail themselves of a **moratorium period on loans and on lines of credit**, in relation to the debt exposures towards banks, financial intermediaries, or other entities entitled to grant credit in Italy.

Therefore, in order to partially cover the exposures of the financing entities and with the purpose of mitigating the economic effects of a possible worsening of the credit quality coming from the application of the mentioned support measures, a **special section** of the Central Guarantee Fund for small and medium enterprises (the “Fund”), with a budget of €1.73 billion was established.

2. Mechanism by which the guarantee for the financial support measures operates

2.1. Conditions for the activation

As said, in order to mitigate the risk of credit crunch during the epidemiological emergency period, the operations subject of financial support measures, laid down in paragraph 2 of the aforementioned Article 56, are therefore admitted to the guarantee of a specific special section of the Fund. But whereas the percentage of cover and the maximum amount guaranteed from the Fund are generally established after an assessment related to the type of recipients and to the type and duration of the financial transactions, in such case, on the other hand, the admission to the guarantee takes place **without any assessment of the creditworthiness**.

2.2. Submission of the application for activation

In order to enjoy such new form of guarantee for the covering of exposures coming from the granting of support measures to SME, the financing entity must simply forward an **electronic request** containing the indication of the maximum amount guaranteed.

Through the Fund’s online portal (<https://www.fondidigaranzia.it/presentazione-domanda-online/>), authorized banks and intermediaries may submit the application for the admission to the guarantee, carry out all communications following the admission, in accordance with the legislation and complete the procedures for the activation and the settlement of the guarantee.

First of all, in order to sign in to the electronic procedure of the application of admission to the guarantee, it is necessary to request the proper credentials through the sending of the “Form for request of credentials to sign in to the electronic procedure for requesting parties” which can be found 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 proceed in sending the application for activation of the guarantee.

2.3. Limits of coverage of the guarantee for the financial support measures

The guarantee for the support measures offered covers only partially the damages suffered from financing entities as a consequence of the epidemic.

In particular, the Fund’s special section, with a budget of €1.73 billion, guarantees for an amount equal to **33 per cent**:

- the greater uses, as of September 30, 2020, compared to the amount, used at the issuing date of the *Cura Italia* Decree, of loans referred to in letter a) of paragraph 2 of Article 56;

¹ Defined by the European Commission’s Recommendation No 2003/361/CE of May 6, 2003.

- the loans and other financings whose deadlines are extended as a result of letter b) of paragraph 2 of Article 56;
- the individual instalments of mortgages and of other financings with repayment by instalments or of lease payments expiring by September 30, 2020 and that have been suspended as provided for in letter c) of paragraph 2 of Article 56².

With reference to loans granted with third parties' funds, the implementation of the moratorium entails that the related funding contract is automatically extended in relation to the extension of the financing transaction, at the same conditions of the original contract, without prior authorization by the aforementioned third parties. On the other hand, for subsidized loans, a communication to the incentivizing body is provided for.

2.4. The enforcement of the guarantee

Finally reference is made to the modalities and terms according to which the guarantee may be enforced.

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

- i) the total or partial non-fulfilment of the exposures coming from revocable credit facilities and for the loans agreed upon advance payments on existing receivables;
- ii) the, even partial, omitted payment of the amounts due for principal and interests related to loans that are not repayable by instalments;
- iii) to the non-fulfilment of one or more instalments of suspended loans or lease payments.

The intermediaries may send to the Guarantee Fund for SME the application for the enforcement of the guarantee referred to loans and to other financings, together with an assessment of the final loss chargeable to the Fund. Concerning the instalment receivables, the guarantee can be activated, with the same above-mentioned requirements, within the limits of amount of the instalments or of the lease payments suspended until September 30, 2020.

The Guarantee Fund, after having verified the legitimacy of the application, updates the related funds and settles, in favour of the financing entity within 90 days, an advanced payment equal to 50% of the lower amount between the maximum amount guaranteed by the special Section, set forth in paragraph 6 of Article 56, and 33 per cent of the final loss considered as chargeable to the Fund.

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

² Paragraph 2 of Article 56 sets forth textually that: *"In order to support business activities damaged by the epidemic of COVID-19, the companies, as defined at paragraph 5, may avail themselves, upon communication – in relation to the debt exposures towards banks, financial intermediaries pursuant to Article 106 of Legislative Decree No. 385 of September 1st 1993 (Consolidated Law on Finance) and of the other entities entitled to grant credit in Italy – of the following financial support measures:*

a) for the revocable credit facilities and for loans agreed upon advance payments on existing receivables as of February 29, 2020 or, if exceeding, at the date of publication of this Decree, the agreed amounts, both for the used part and for the part that has not been used yet, cannot be revoked, totally or partially, up to September 30, 2020;

b) for loans that are not repayable by instalments, with contractual deadline before September 30, 2020 the contracts are extended, together with their respective ancillary elements and without any formality, up to September 30, 2020 at the same conditions;

c) for mortgages and other financing with repayment by instalments, implemented also through the issue of agricultural loans, the payment of the instalments or of the lease payments expiring before September 30, 2020 is suspended up to September 30, 2020 and the repayment plan of the instalments or of the lease payments subject to suspension, is deferred, together with the ancillary elements and without any formality, in accordance with modalities ensuring the absence of new or higher charges for both parties; the companies are enabled to require to suspend only the repayments on principal".

By Newsletter No. 47 of 28 March, 2020 ([click here](#)) INPS (Italian National Social Security Institution) states in order to clarify the own Memorandum No. 1287 of last 20 March (see newsletter, updated 23 March 2020 [click here](#)), to illustrate the income support measures contained in Decree Law No. 18 of 2020 with exclusive reference, however, to the suspension of the working activity for events related to the emergency caused by Covid-19.

The Newsletter provided a set of useful clarifications in relation to interpretation and implementation of the recent government provisions, but, as it will be specified by way of conclusion, without fully solving all difficulties connected to the activation of the wage top-ups payments, in particular by micro-enterprises.

Short review

It was also underlined that, in order to access to the redundancy fund, the requesting parties (for example companies referred as to in Article 10 of Legislative Decree No. 148/2015) are relieved of undertaking the trade union procedure, being sufficient the mere information.

As a consequence, the information, consultation and joint examination “can” (and must not, under penalty of inadmissibility “*tout – court*” of the related request) be carried out also electronically within three days after the advanced communication. INPS points out that can authorize, in any case, the payment of the wage-top-up, even without the preliminary receiving of the documentation acknowledging the successful consultation.

Concerning the limitation period for submitting the applications, for the events of suspension or reduction of the working activity started in the period between February 23, 2020 and March 23, 2020 (and namely the date of issuance of INPS’s Memorandum No. 1321 of 2020), INPS pointed out that the *dies a quo* (the beginning) coincides with the aforementioned date of publication.

It was furthermore stated that the instruments of wage-top-up referred to as in Decree Law No. 18 of 2020 may be activated even if the holiday periods were not previously fully taken by the employees in question (indeed, the application does not contain the related field) and even if the requesting company already run out, at the moment of submission of the application, the cash “plafond”.

INPS clarifies, with reference to the employees who shall benefit from the top-up payment, that the support can be activated for employees hired by the requesting company on February 23, 2020 (without prejudice to Article 2112 of the Italian Civil Code and to particular case of the so called “*cambio appalto*” (change of contract); it remains confirmed that there is no necessity of 90 days of length of service.

Companies may request that INPS pay directly the employee, except for, as usual, anticipating the payment and then balancing.

It is also confirmed that the production units located in the “former red and yellow areas” can apply for the “double” period of redundancy fund and precisely as set forth in Legislative Decree No. 9 of 2020 in addition to the nine weeks of Decree Law No. 18 of 2020. For the aforementioned companies it is therefore possible to demand for the ordinary wage-top-up and the ordinary allowance for 13 weeks, with special single cause “COVID-19 Emergency Decree Law No. 9 of 2020” and for 9 further weeks, with special single cause “COVID-19 National”. INPS points out that if the periods of the two requests containing different special single causes coincide, it is necessary that the employees concerned recipient of payments, are different, whilst, if the periods requested do not overlap, the employees can be the same.

The Newsletter points out then that companies availing themselves of a Cigo (an ordinary redundancy fund) or of an ordinary allowance in progress or that have already submitted the application, can demand for the shock-absorber with special single cause “Covid-19 National” even for already authorized periods or for periods subject of applications which have been already submitted and not yet defined; INPS will automatically revoke the previous authorizations and/or applications.

Finally, companies complying with the scope of the alternative bilateral funds (as for example the handicraft sector) must submit the application for obtaining the access to the ordinary allowance, with the new special single cause “Covid-19 Emergency”, to the related fund that will disburse the payment, irrespective of whether or not the company meets the requirements for paying the contributions; the fund, therefore, shall not make the disbursement subject to the payment of the arrears.

First considerations

Even if the newsletter in question contains many useful indications to allow companies to obtain the access to payment of wage top-up with special single cause “linked to Covid-19”, perhaps it would be advisable, in the interest of the so called micro-enterprises to have a clarification by INPS on the provisions that, in the body of the Decree Law No. 18 of 2020 regulate the access of said entities to the exceptional redundancy fund.

Whereas, indeed, Decree No. 18, for such companies, did not provide for the preliminary reaching of an agreement at territorial level, between Regions and the most representative Trade Unions, from the reading of the bilateral agreements signed in the meantime, the Regions set forth the implementation of “bilateral” agreements.

The fate of employees of companies employing less than 5 employees has not become completely clear yet, in the event that an agreement with the trade unions should not be reached; the formalisation of such agreement could be postponed forward in time, only for reasons of unavailability to move, but also “electronic” unavailability of the trade unions officials that are involved on many issues in the current emergency situation.

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