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SOCIAL WELFARE SCHEMES

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1. Premise: the «Covid-19» epidemiological emergency

The «Covid-19»[1] epidemiological emergency currently affecting our Country has important repercussions on employment relationships and on the business lifecycle.

[1] This is the acronym that identifies the respiratory disease caused by the new coronavirus, representing the synthesis of "COrona", "VIrus", "Disease" and "2019" as year of identification. The virus was instead called "Respiratory syndrome acute severe coronavirus 2" or "SARS-CoV-2". More information can be found on the website of the Ministry of health: http://www.salute.gov.it/

From a regulatory point of view, the situation is particularly fluid and constantly evolving: it is therefore necessary to keep it continuously monitored, since the provisions that are valid today may no longer be in force tomorrow.

The information below is updated to 28 May 2020 and therefore takes into account, *inter alia*, the **Law Decree 19 May 2020 no. 34** (so-called «**Rilancio Decree**»), which has amended, among the rest, Law Decree no. 18/2020 (so-called "Cura Italia Decree"), already amended upon conversion of Law 27/2020.

Please note that, in addition to the measures adopted at a national level – which are addressed in this document – it is necessary to pay attention to the provisions of the Regions, Prefects and Municipalities, the relevance of which is limited to their respective territories and which cannot be taken into consideration here below.[2]

2. «Special» social welfare schemes for facing the emergency

Without prejudice to the applicability of the "common" social welfare schemes set forth by Legislative Decree no. 148/2015 where the relevant conditions are met, the emergency legislation – and, in particular, Law Decree no. 9/2020, entered in force on 2 March 2020 – introduced a series of special measures aimed at supporting companies located in the municipalities belonging to the now former "red areas"[3] and, more in general, those located in the Regions of Lombardy, Veneto and Emilia-Romagna, as well as their employees who reside or are domiciled in such areas.

The following *Cura Italia* Decree, which came into force on 17 March 2020, then provided for special rules on social welfare schemes applicable to the entire national territory.

In this regard, it is recalled that in the Protocol shared by the Social Partners[4] – signed pursuant to Article 1, paragraph 1, no. 9), of the Prime Ministerial Decree of 11 March 2020, and containing the minimum safety and precautionary measures which must be complied with as a condition for, depending on each case, the continuation or the resumption of the company activity (see the Focus «THE SO-CALLED «PHASE 2». THE GRADUAL RESUMPTION OF ACTIVITIES») – social welfare schemes have been identified

[2] For example, specific restrictive measures have been issued by the Lombardy Region (see orders no. 514, no. 515 and no. 517 dated 21, 22 and 23 March 2020, which have been enacted pending the entry into force of Law Decree no. 19/2020, the orders no. 521, no. 522, no. 528, no. 537 and no. 538 dated 4, 6, 11 and 30 April 2020 as well as the orders no. 539, 541 and 547 dated 3, 7 and 17 May 2020).

[3] These are the municipalities identified in «annex 1» to the Prime Ministerial Decree of 1 March 2020, namely: (*i*) in the Lombardy Region: Bertonico, Casalpusterlengo, Castelgerundo, Castiglione D'Adda, Codogno, Fombio, Maleo, San Fiorano, Somaglia, Terranova dei Passerini; (*ii*) in the Veneto Region: Vo'.

[4] Both in the original version of 14 March 2020 and in the "updated" version of 24 April 2020.

as an "exceptional" solution to be used in order to ensure the safety of the workplace as well as the implementation of specific or periodic cleaning and sanitizing interventions.

In the same Protocol, the Social Partners also recommended to companies: (i) the use, as a priority, of the social welfare schemes available in compliance with the contractual institutions generally aimed at allowing the abstention from work without any loss of salary; (ii) to evaluate the possibility of ensuring that social welfare schemes cover the entire company population, if necessary also on a shifting basis.

2.1. The (now former) «red areas»

Due to the ongoing epidemiological emergency, Article 13 of Law Decree no. 9/2020 provided with respect to employers of the areas in question the possibility to apply for the **"ordinary redundancy fund**" (CIGO) and "**ordinary allowance**" (the latter, also with respect to employers registered with the "Wage Integration Fund", so-called FIS, who employ an average of no. 5 employees) by following a simplified procedure and indicating the "Covid-19 Law Decree no. 9/2020" specific reason, for a maximum of three months.

Furthermore, pursuant to Article 15 of Law Decree no. 9/2020, companies for which the protective measures linked to the suspension and reduction of working hours do not apply (and, therefore, those provided for by the well-known Legislative Decree no. 148/2015) can apply for a "**Redundancy Fund in Derogation**", for the duration of the suspension of the employment relationship and, in any case, for a maximum period of three months starting from 23 February 2020.

It should be noted that **Law 27/2020** abrogated Law Decree no. 9/2020 making the relevant provisions on social welfare schemes flow, with some amendments, in the *Cura Italia* Decree, in addition to the provisions contained therein (see below).

2.2. The Regions of Lombardy, Veneto and Emilia-Romagna

Law Decree no. 9/2020 also provided the possibility for employers operating in the private sector, including the agricultural one, who do not have access to the common social welfare schemes, to apply – only in case of ascertained prejudice, as a consequence of the orders issued by the Ministry of Health, by agreement with the Regions, within the context of the measures set forth by the Law Decree no. 6/2020, and following the execution of an agreement with the union organizations that are comparatively more representative – to a **redundancy fund in derogation** treatment, for the duration of the suspension of the employment relationship and, in any case, for a maximum period of one month.

As mentioned, **Law 27/2020** abrogated Law Decree no. 9/2020, combining the provisions concerning social welfare schemes already set forth by the *Cura Italia* Decree with regulations specifically provided for employers of the Regions of Lombardy, Veneto and Emilia-Romagna, to which reference must now be made (see below).

2.3. The entire national territory

As said, the *Cura Italia* Decree provided special rules on social welfare schemes, applicable to the entire national territory and granted within maximum spending limits. The Italian pension authority (INPS) monitors the applications so that the spending limits are complied with and, for matters of its own competence, keeps the Ministry of Labour, the Regions and the Autonomous Provinces informed on the outcome of such activity. In fact, where the limits at issue are reached, further applications can no longer be accepted.

2.3.1. Ordinary Redundancy Fund and ordinary allowance

Pursuant to Article 19 of the *Cura Italia* Decree, employers that in 2020 suspend or reduce the working activity for events related to the Covid-19 epidemiological emergency may apply to the "ordinary redundancy fund" and for the issuance of the "ordinary allowance", by using the "Covid-19 emergency" **specific reason**. The ordinary allowance is also granted to employees working for employers who are registered with the "Wage Integration Fund" (**FIS)** and employ **more than 5 employees**.

The *Rilancio* Decree – without prejudice to the Municipalities belonging to the now former "red areas"(see below) – has confirmed the maximum duration of **9 weeks** for the redundancy fund treatment, which can be used by employers in case of reduction or suspension of the working activity due to the events that are linked to the ongoing epidemiological emergency, in the period between 23 February and 31 August 2020. With unique reference to employers who have fully benefited of the period previously agreed, the possibility to request **5 additional weeks**, in the same period, for therefore a total of 14 weeks that can be used until 31 August 2020.

Moreover, in order to deal with the possible prolongation of the effects arising from the Covid-19 epidemiological emergency in terms of employment, an **additional** period of **4 weeks** for the redundancy integration treatment has been provided, for periods starting from 1 September to 31 October 2020 (for a total of 18 non-continuous weeks, according to timing14+4).

With sole reference to employers of the sectors of tourism, fairs and conferences, fun parks, life shows and cinemas, the possibility to use 4 additional weeks also for periods starting before 1 September 2020 – and, therefore, as a continuation with the first 14 weeks, for a total of 18 weeks, also continuous – on condition, however, that the same employers have fully used the period previously granted up to the maximum duration of 14 weeks.

The *Cura Italia* Decree provided for a **simplified** procedure, by way of derogation from the legislation applicable to "common" social welfare schemes. Among other things, the requesting employer is exempted from compliance with Article 14 and with the procedural terms set forth by Article 15 of Legislative Decree no. 148/2015, without prejudice to the **information** and **consultation** activities as well as the **joint examination** with

the union organizations, which must be carried out electronically, within the 3 days following that of the preventive communication.

As a result of the amendments introduced by the *Cura Italia* Decree, upon conversion of Law no. 27/2020, the aforementioned procedure had been furtherly simplified, through the full exemption from the obligations of information, union consultation and joint examination. However, the following *Rilancio* Decree has restored such procedural duty, with effect from 19 May 2020.

The application is **not** subject to the verification of the **reasons** referred to in Article 11 of Legislative Decree no. 148/2015. The **additional contribution** set forth by Article 5 of Legislative Decree no. 148/2015 is **not** due. Furthermore, the measure at issue is not taken into consideration in order to verify compliance with the limits of duration provided for by the law (and is neutralized for the purposes of subsequent requests) and, as to the ordinary allowance, the maximum limit equal to ten times the amount of the ordinary contributions paid does not apply.

Following the amendments of the *Rilancio* Decree, the request must be submitted within **the end of the month following** the one of start of the suspension or reduction of the activity, without prejudice to the fact that, as to the requests referred to periods of suspension or reduction of the activity which have started in the period between 23 February and 30 April 2020, the submission term is **31 May 2020**. Where such term (*i.e.* the end of the month following the one of start or, depending on the case, 31 May 2020) is not respected, the redundancy integration treatment will not be applicable to periods preceding by one week the date of submission.

As to the targeted workers, the *Rilancio* Decree has postponed to **25 March 2020** the date in which, in order to benefit from the redundancy integration treatment at issue, employees must already be employed by the requesting employers, where such term was initially represented by 23 February 2020 or, as a result of the previous extension introduced by Law Decree 23/2020 (the so-called "Liquidity Decree", entered into force on 9 April 2020), from 17 March 2020.

On the contrary, Article 1, paragraph 2, of Legislative Decree no. 148/2015 – which requires the possession of a seniority of effective work of at least ninety days at the production unit for which the treatment is required – does not apply.

As a further provision introduced by the *Rilancio* Decree, the beneficiaries of the **ordinary allowance** with the reason "Covid-19 emergency" are entitled to the allowance for the family unit, with respect to the period of payment adopted and under the same conditions of employees with normal working time. On the point, it is noted that INPS, by circular letter no. 47/2020 had, instead, reiterated its previous opposite approach.

As previously mentioned, while repealing Law Decree no. 9/2020, **Law no. 27/2020** implemented, with some amendments, provisions related to social welfare schemes in support of the companies located in the municipalities belonging to the (now former) "red areas", directly into the *Cura Italia* Decree. Article 19-*bis* of the decree now provides that employers with production units located in the municipalities identified in

«annex l» to the Prime Ministerial Decree of 1° March 2020 as well as employers who do not have registered offices or production units or operating units within such municipalities, may request, only with respect to employees in force resident or domiciled in such municipalities, the "ordinary redundancy fund" or the issuance of the "ordinary allowance", by using the "Covid-19 emergency" specific reason, for an **additional period not exceeding three months**. In such case, the ordinary allowance is granted also to those employees working for employers who are registered with the FIS and employ more than 5 employees and for whom the company threshold, pursuant to Article 29, paragraph 4, of Legislative Decree no. 148/2015 (namely the limit, otherwise applicable, equal to ten times the amount of ordinary contributions paid), does not apply.

2.3.2. Alternative ordinary treatment for employers benefiting of the "extraordinary redundancy fund" (CIGS) or of solidarity allowances

Pursuant to Articles 20 and 21 of the *Cura Italia* Decree, companies that are already benefiting from an "Extraordinary Redundancy Fund" (CIGS) or employers registered with FIS and with "solidarity allowances" still ongoing at the date of 23 February 2020, may apply to the "Ordinary Redundancy Fund", in which case the ordinary treatment **suspends** and **replaces** the extraordinary or solidarity one already granted. Also in this case, the additional contribution set forth by Article 5 of Legislative Decree no. 148/2015 is not due.

As to the duration of such "alternative" treatment, employers with ongoing solidarity allowance treatments may benefit of a maximum of **9 weeks** of ordinary treatment by using the reason "Covid-19 emergency". The new provisions introduced by the *Rilancio* Decree in terms of overall duration of the alternative ordinary treatment apply, instead, to employers benefiting of the extraordinary redundancy fund, who can therefore be granted a maximum of **9 weeks** for periods starting from 23 February until 31 August 2020, increased by **5 additional weeks**, in the same period, for those who have fully benefited of the period previously agreed, with the granting of an additional period of treatment of a maximum duration on **4 weeks**, for periods starting from 1 September to 31 October 2020.

Employers located in the municipalities belonging to the former "red areas" who, on 23 February 2020, were already benefiting of an "Extraordinary Redundancy Fund", may apply, based on Paragraph 7-*bis* introduced, upon conversion, by Article 20 of the *Cura Italia* Decree, to the "Ordinary Redundancy Fund" for an **additional period not exceeding three months**, within certain spending limits.

2.3.3. Redundancy fund treatment for agricultural workers

The *Rilancio* Decree also intervened with respect to the redundancy integration fund for agricultural workers (so-called "CISOA"), which, due to events linked to the Covid-19 epidemiological emergency, can be granted **by way of derogation from the limits of use** referred to the single employee and to the number of working days to carry out at the company as provided for by the ordinary provisions of Law no. 457/1972.

The periods of treatment are granted for a maximum duration **of 90 days**, from 23 February to 31 October 2020 and, in any case, with end of the period by 31 December 2020, and are neutralized for further requests.

The application must be sent by the **end of the month following** the one in which the period of suspension of the working activity started, without prejudice to the fact that, as to the requests referred to periods of suspension started in the period between 23 February and 30 April 2020, the deadline for the submission is **31 May 2020**. In order to ensure promptness of authorizations, the CISOA redundancy treatments justified by the reason "Covid-19 emergency" are granted by the INPS locally competent.

By express provision of the law, employees of companies working in the agricultural sector who are not entitled to the CISOA redundancy treatment may request the granting of the redundancy fund **in derogation** for Covid-19 (see below), and such treatment, due to the hours of reduction or suspension of the activity, within the limits hereby provided, is equivalent to work for the calculation of the agricultural unemployment benefits.

2.3.4. Redundancy Fund in Derogation

Pursuant to Article 22 of the *Cura Italia* Decree, employers of the private sector, including agricultural, fisheries and third sector employers, for which the protections provided for by current provisions on suspension or reduction of working hours are not applicable, may request, in relation to the Covid-19 epidemiological emergency, the granting – by the Regions and by the Autonomous Provinces, following the execution, **also by electronic means**, of an **agreement with the unions** that are comparatively more representative – of access to the Redundancy Fund in Derogation.

The maximum duration of such treatment, initially equal to **9 weeks** for periods between 23 February and 31 August 2020, has been increased by the *Rilancio* Decree to **5 additional weeks**, in the same period, for employers who have fully benefited of the period previously granted (for, therefore, a total of 14 weeks, until 31 August 2020).

As provided in relation to the ordinary redundancy fund, in order to deal with the possible prolonging of the effects on employment arising from the Covid-19 epidemiological emergency, a possible **additional** period of the fund in derogation has been provided for a maximum duration of **4 weeks**, for periods starting from 1 September to 31 October 2020 (for a total of 18 non continuous weeks, according to the timing 14+4).

Also in this case, employers working in the sectors of tourism, exhibitions and conferences, fun parks, live shows and cinemas, may apply for 4 additional weeks also for periods preceding 1 September 2020, provided that the same employers have fully benefited of the period previously agreed up to the maximum duration of 14 weeks.

As for the scope of application of the measure, with circular letter no. 47/2020, INPS clarified that it can also be requested by companies that, being entitled only to the CIGS, cannot access the ordinary redundancy fund by using the "national Covid-19" reason

(including, for example, commercial companies and travel and tourism agencies with more than 50 employees).

The workers benefiting from this measure – who, also in this case, in light of the amendments made by the *Rilancio* Decree, must have already been employed by the requesting employer at the date of **25 March 2020**, and not anymore at the date of 17 March 2020 – are entitled to the figurative contribution and to relevant accessory charges.

From a procedural point of view, the agreement with the unions is **not** requested for employers with up to **5 employees.** Following the amendments made to the *Cura Italia* Decree upon conversion, such agreement was also not requested with respect to employers who had closed their activity accordingly to the urgency provisions enacted for dealing with the Covid-19 epidemiological emergency, but the *Rilancio* Decree has re-established the obligation to reach an agreement also for such employers, with effect from 19 May 2020.

The redundancy fund treatment of the maximum duration of 9 weeks initially provided is granted by decree of the **Regions** and Autonomous Provinces, which instruct the applications – which, as a result of the Liquidity Decree, are exempt from stamp duty – according to the chronological order of submission. To this purpose, it is noted that the specific regulations are influenced by the rules set forth at a regional level within the framework agreements reached between the Regions and the union organizations and, therefore, varies from region to region.

In order to facilitate the payment timing, the *Rilancio* Decree has provided that the periods of treatment **following the first 9 weeks** are granted by **INPS**, to which employers must send, electronically, a specific request, containing the list of beneficiaries and indication of the hours of suspension of each employee for the whole period agreed. The request can be sent, starting from 18 June 2020, to the INPS locally competent, within **the end of the month following** the one in which the period of suspension or reduction of the working activity begun.

As to both the first 9 weeks and the additional period of redundancy fund, if the crisis affects production units of **"multi-located" companies –** and, therefore, companies with production units located in several Regions or Autonomous Provinces, in a number to be defined by a specific ministerial decree – the redundancy fund in derogation is granted by the **Ministry of Labour**.

As to the payment modalities, the treatment can only be granted through the **direct payment** by INPS. The sole exception is provided with respect to the "**multi-located**" employers, for whom the treatment can be granted through **anticipations** of the company.

The employer who benefits of the direct payment by INPS:

- must submit the request within the fifteenth day following the beginning of the period of suspension or reduction of the working activity, together with the essential data for the calculation and payment of an anticipation of the treatment in favour of the employees:

- is obliged to send to INPS all necessary data for the payment of the treatment according to the modalities set forth by the institute, within day 20 of each month following the one in which the period of redundancy fund is placed (if a request is referred to periods started between 23 February and 30 April 2020, already allowed by the competent administrations, the deadline is 8 June 2020).

INPS takes care of the acceptance of the requests by granting an **anticipation** of the payment of the treatment **within 15 days** from the receipt of the same requests. The amount of the anticipation is calculated based on **40%** of the hours agreed for the whole period, without prejudice to the fact that, following the full transmission of the date by the employers, INPS pays the remaining treatment (or recovers any sums unduly anticipated).

With specific reference to the Autonomous Provinces of Trento and Bolzano, the framework agreements reached with the most representative social partners pursuant to Article 22, Paragraph 5, of the *Cura Italia* Decree provided that – in order to simplify and speed up the access procedures to the derogation measures in favour of employees working for employers with production units located in the territory of the Provinces – the relevant granting is directly agreed by the respective **territorial bilateral solidarity Funds**, established pursuant to Article 40 of Legislative Decree 148/2015, and not by the Provinces. The requests must, therefore, be submitted electronically to such bilateral Funds, which will also take care of the payment of the treatments.

Moreover, Article 87 of the *Rilancio* Decree provided that, for year 2020, in order to deal with the epidemiological emergency, the Autonomous Provinces of Trento and Bolzano may agree additional redundancy funds in derogation, by using any remaining resources.

As anticipated, **Law 27/2020** intervened with regard to employers located in the municipalities belonging to the former "red areas" and in the Regions of Lombardy, Veneto and Emilia-Romagna also in relation to the Redundancy Fund in Derogation:

- Paragraph 8-*bis* introduced by Law 27/2020 under Article 22 of the *Cura Italia* Decree provides that employers with production units located in the **former "red areas"** as well as employers who do not have registered offices or production and operating units within such areas, may apply, only with respect to employees who are resident or domiciled there, to the Redundancy Fund in Derogation, for an **additional period not exceeding three months**, starting from 23 February 2020;
- Similarly, Paragraph 8-*ter* provides that employers with production units located in the Regions of **Lombardy, Veneto and Emilia Romagna**, as well as employers who do not have registered offices or production or operational units within such Regions, may be granted, only with respect to employees who reside or are domiciled in such Regions, with a derogation treatment, for an **additional period not exceeding 4 weeks**.

3. «Special» social welfare schemes and renewal and extension of fixed term contracts

Upon conversion of the *Cura Italia* Decree, **Law 27/2020** also intervened with respect to the connection between social welfare schemes and the renewal of fixed term contracts.

In particular, due to the ongoing Covid-19 epidemiological emergency, employers benefiting from "special" social welfare schemes pursuant to Articles 19-22 of the same decree, under the terms indicated therein, are granted the possibility, by derogating to the provisions of Articles 20, paragraph 1, letter c), 21, paragraph 2, and 32, paragraph 1, letter c) of Legislative Decree 81/2015, to proceed, during the same period, with the renewal or the extension of fixed term contracts, even for supply of work reasons.

Therefore, the aforementioned employers may derogate to:

- the prohibition of **temporary supply of work contracts** ("*contratti di somministrazione di lavoro*") (Article 32, paragraph 1, letter c, Legislative Decree 81/2015) or **fixed term employment contracts** (Article 20, paragraph 1, letter c, Legislative Decree 81/2015) in production units subject to a suspension of work or to a reduction of working hours as part of the redundancy fund regime, which involve employees performing the tasks to which the supply of work contract and the fixed term employment contract are respectively referred to.
- the prohibition to **rehire** on a fixed-term basis within 10 days from the date of expiry of a fixed term contract up to 6 months, or within 20 days from the date of expiry of a fixed-term contract with a duration exceeding 6 months, the breach of which implies the transformation of the second contract into an indefinite term employment contract (the so-called "stop & go" pursuant to Article 21, Paragraph 2, Legislative Decree 81/2015).

To this purpose, it is noted that the legal provisions introduced by Law 27/2020, by making express reference to the renewal or the extension, do not seem to allow "new hiring" on a fixed-term basis.

The *Rilancio* Decree, entered into force on 19 May 2020, also provided that, by way of derogation from Article 21 Legislative Decree 81/2015, in order to deal with the resumption of activities as a consequence of the Covid-19 epidemiological emergency, it is possible to **renew** or **extend** until 30 August 2020 the fixed-term employment contracts in force as of 23 February 2020, also in the **absence** of the "**justifying reasons**" under Article 19, Paragraph 1, Legislative Decree 81/2015 (*i.e.* temporary and objective needs, not linked to the ordinary activity, replacement of other workers or needs linked to temporary, significant and not foreseeable increases of the ordinary activity*).*

Therefore, a new regime of temporary non-causality has been introduced, which allows companies to freely proceed with the extension or renewal of fixed-term contracts in force as of 23 February 2020, within the maximum term of 30 August 2020 (see Focus «FIXED-TERM CONTRACTS »).

To this purpose, it is noted that, based on the indications provided by the Ministry of Labour on its own website, the date of 30 August 2020 represents the term for the duration of the fixed-term contracts possibly extended or renewed on the basis of the provision at issue (and not the term within which the renewal or extension can be issued).

Following such date, renewals and the extensions as a result of which the fixed-term contract exceeds the 12-month duration will return to being subject to the existence of the **justifying reasons** under Article 19 of Legislative Decree 81/2015. In the breach of such justifying reasons, the relationship transforms into an indefinite term one.

Despite the above-mentioned ministerial clarifications, some interpretative doubts remain with the respect to the expression "*in order to deal with the resumption of activities as a consequence of the Covid-19 epidemiological emergency*" contained in the legal provision, which, according to some, may be intended as an actual "cause", this way affecting the power to renew or extend the fixed-term contract in the absence of the "ordinary" justifying reasons. Under a different perspective, instead, such expression does not have a mandatory force.