

Preliminary remarks on the **additional** emergency measures introduced by the Italian Government with respect to the Covid-19 situation

13 March 2020



Legal Report

Background

On 12 March 2020 a new Prime Minister decree (the “Second Decree”) entered into force in Italy, following the previous Prime Minister decree dated 8 March 2020 (which we analysed in our previous memo which can be found [here](#)).

The Second Decree introduced additional restrictions on certain activities, which are now suspended by order of the authority and provides new guidelines for all other businesses active in Italy.

The new provisions will remain in force until 25 March 2020 and can be extended with a further Prime Minister decree.

The purpose of this document is to provide an overview of the new provisions. We are however constantly monitoring the situation and will release further updates in case of further developments.

Our team is available to address any specific question you may have.

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1 Shops to remain closed, subject to certain exceptions

With the exception of those shops falling within the categories listed below, all retail shops shall remain closed until 25 March 2020.

The following shops may remain open, even if they are located within markets or malls (provided they have an independent access):

- Food shops;
- Newsagents;
- Tobacconists;
- Pharmacies and parapharmacies;
- Supermarkets;
- Consumer electronic shops, computer shops;
- Gas stations and retailers of any fuel for domestic use and heating;
- Hardware, paint, glass, electric and thermo-hydraulic stores;
- Lighting stores;
- Any shop authorized to sell non-prescription medicines;
- Perfumeries;
- Pet shops;
- Opticians;
- Laundries, including industrial cleaners;
- Funeral houses.

Online, TV, mail, radio and telephone sales are still allowed and subject to no restriction.

Vending machines can remain in operations.

2 Bars and restaurants

All bars and restaurants shall remain closed until 25 March 2020.

Home delivery services are allowed, subject to compliance with the necessary sanitary standards in respect of packaging and transport.

Any food-related shops located within gas stations, railway stations, airports, hospitals as well as within lake harbours (but not shops located within sea ports) can remain open, provided they must ensure at all time the minimum distance of one metre among clients.

3 Agriculture

All farming businesses and the relevant supply chains are allowed and subject to no restriction, subject to the obligation to comply with the appropriate sanitary standards.

4 Financial services

Banks, insurance companies and financial operators are not subject to restrictions, subject to the obligation to comply with the appropriate sanitary standards.

We are of the opinion that all these businesses shall also take into account the guidelines provided by article 1, paragraph 7 of the Second Decree (see section 6 below).

5 Public transport services

Within any Region, the Governor has the power to issue orders aimed at restricting or suspending certain public transport lines.

The Transport Minister has the power to issue similar orders in respect of rail services, air transport and inter-regional coach lines.

6 Guidelines applicable to industrial companies, service and commercial companies, as well as to professional service firms

All other businesses (including industrial activities and commercial activities), as well as all professional service firms can remain open, but the Second Decree contains a general recommendation to comply with the following guidelines:

- Smart working must be the preferred option to the widest possible extent;
- Employees must be encouraged to stay on holiday or make use of their paid leave and, more in general, of any further treatment provided by the applicable collective bargaining agreements;
- All departments which are non-necessary with regard to the production process (whether it is a manufacturing business or a service business) should remain closed;
- Adoption of appropriate security protocols to prevent any further spread of Covid-19. In case the minimum distance of one metre among employees is not ensured, businesses shall provide employees with the necessary personal safety tools (gloves, masks, glasses etc.). In this respect, the involvement of the Company Doctor

and the Prevention and Protection Service Manager (RSPP) is advisable;

- Workplaces shall be sanitized;
- In any case, movements within workplaces must be limited as much as possible and common areas must be restricted to limited accesses. Also in this respect the involvement of the Company Doctor and the RSPP is advisable;
- Consultation and agreements with the Unions in respect to the above are recommended.

7 Frequently Asked Questions

7.1 Is a service business (i.e. a consultancy company or a producer of video and music content) affected by the Second Decree?

Yes, we are of the opinion that

- any business falling within the definition provided by article 2082 of the Italian Civil Code¹; as well as
- any professional service firm (law firms, tax firms, notaries)

must at least comply with the guidelines provided by article 1, paragraph 7 of the Second Decree (see section 6 above).

Certain businesses (generally speaking all retail shops, except for those listed in section 1 above) are subject to more specific restrictions.

7.2 Are movements within the Italian territory allowed for working reasons?

Yes, but **only** for documented business reasons, to be certified by the employee – in case of controls by the Authorities – by means of: (i) a self-certification to be released on a specific model made available by the Government and **in addition** (ii) a specific statement released by the employer.

We cannot exclude some further restrictions adopted by municipalities. Although they should be in contrast with the State provisions and therefore without effect, it is however advisable, in case of business transfers, to prudentially check whether further local restrictions are in place or not.

7.3 What kind of business reasons are allowed?

Our interpretation of the measures enacted so far is that a documented business reason occurs where the working activity cannot be performed from home.

However, considering the possible liabilities on the part of the employer², this has to be read in conjunction with the general recommendation to suspend non-necessary activities.

7.4 What can the employer do?

- Dispose smart working in all cases where this is possible;
- Dispose fruition of holidays and paid leave;
- Provide the employee with a certification of the documented business reasons where options above are not feasible;
- Limit movements and transfers and promote the use of technology to communicate by remote;
- Enact proper policies, information and protocols (see section 6 above);
- Apply for social benefits (we are expecting new measures in this respect by the Government in the near future);
- Proceed with individual/collective dismissals (*extrema ratio*).

7.5 Is it possible to order to use holidays and permits to the employees?

In our opinion, given the extraordinary situation and the *rationale* of the measures enacted, it is possible to unilaterally dispose the fruition of holidays and paid leave.

7.6 And if the employees refuse to work?

The employees refusal is justified **only** in case of actual risks for their health and safety. If the employer has adopted all the necessary precautions in this respect (see section 6 above), employees are obliged to work and the possible refusal could be relevant from a disciplinary standpoint.

7.7 Which information is the employer entitled to ask to the employee?

Generally speaking, such additional measures do not provide yet for additional legal grounds which might change the position already made clear by the Italian Data Protection Authority and available both in Italian and in English [here](#). Accordingly employers should still refrain from collecting, in advance and in a systematic and generalised manner, including through specific requests to the individual worker or unauthorized investigations, information on the

¹ Art. 2082 of the Italian Civil Code states that entrepreneur (imprenditore) is one who professionally undertakes an economic activity, organized to produce or to exchange goods or services.

² Who has to preserve employees' health and safety according, amongst others, to Art. 2087 of the Italian Civil Code and Italian Legislative Decree no. 81/2008.

presence of any signs of flu in the worker and his or her closest contacts, or anyhow regarding areas outside the work environment.

The best way to proceed is still to provide for policies for accessing premises and for smart working (where possible).

7.8 Is the employer allowed to measure the temperature of an employee or a visitor? Even with the consent of the employee?

Generally speaking, no. According to the Art. 29 Data Protection Working Party Opinion 2/2017 on data processing at work *“Employees are almost never in a position to freely give, refuse or revoke consent, given the dependency that results from the employer/employee relationship. Given the imbalance of power, employees can only give free consent in exceptional circumstances, when no consequences at all are connected to acceptance or rejection of an offer”*.

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