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Italy

Liquidity Decree: SACE guarantee and strengthening of SME Guarantee Fund to face COVID-19 emergency

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Introduction

In order to address the lack of liquidity that is affecting the entire productive system of the country as a direct consequence of the economic crisis resulting from the COVID-19 pandemic and the lockdown measures taken to fight its spreading, the Italian Government issued Decree Law no. 23 of 8 April 2020 (hereinafter, briefly, the "**Liquidity Decree**"), following the recent Decree Law no. 18 of 17 March 2020 (also known as the "**Healing Italy Decree**"), which [we already commented](#) when published in the Official Journal of the Italian Republic.

The Liquidity Decree works in two converging directions:

- 1) on the one hand, it allows SACE S.p.A. ('**SACE**') to grant guarantees to support also enterprises other than SMEs and Mid-Cap, with a State counter-guarantee covering the relevant exposures; and
- 2) on the other hand, by fully replacing art. 49 of the Healing Italy Decree, it extends the scope of SME Guarantee Fund, allowing both *non-performing* and "*Mid-Cap*"¹ enterprises to access the Fund, and increasing guarantee thresholds, consequently providing for a sort of automatism to grant the guarantees for certain financing.

1) SACE GARANTEE

SACE Guarantee: scope and temporal limitation of the program

The new Liquidity Decree extends SACE's scope of activity, allowing SACE to grant guarantees in favour of banks, national and international financial institutions and other entities authorised to exercise credit in Italy in respect of loans granted - in any form - to companies established in Italy.

¹ The interministerial decree of 14 November 2017, adopted by the Ministry of Economic Development in concert with the Ministry of Economy and Finance, defines "Mid-Cap" "*enterprises, other than SMEs, with no more than 499 employees*";

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Guarantees issued by SACE pursuant to the Liquidity Decree are on first demand and irrevocable. The liabilities of SACE arising from such guarantees benefit from a State guarantee on first demand, which is unconditional, irrevocable and without recourse.

SACE will be able to guarantee liabilities for an amount up to EUR 200 billion, of which 30 billion shall be allocated to support SMEs.²

This is, however, a measure driven by the emergency and, consequently, limited in time: SACE is allowed to issue guarantees under the Liquidity Decree until 31 December 2020.

Moreover, as it may be deemed as a state aid, the entry into force of the provisions of the Liquidity Decree governing SACE's guarantee is subject to the approval of the European Commission pursuant to Article 108 of the TFEU.

SACE Guarantee: objective scope of application of the Liquidity Decree

As per the objective scope of application of the Liquidity Decree, despite the very broad wording of the provision, which covers financings *granted in any form*, the financing amount covered by the guarantee (and therefore the guaranteed amount) cannot exceed the greater between:

- 25% of the undertaking's annual turnover in 2019, as resulting from approved financial statements (or, alternatively, from tax declaration) e
- 200% of the undertaking's employee-related costs for 2019, as resulting from approved financial statements (or, alternatively, from certified data - if the undertaking's financial statements have not been approved yet)³.

Above thresholds must be calculated according to the criteria set out in the Liquidity Decree, pursuant to which reference must be made to turnover value and personnel costs that the company has, respectively, produced and incurred in Italy, while, if the company belongs to a group, calculation must be made on a consolidated basis.

Financings eligible for SACE guarantee:

- (i) shall have been granted after the entry into force of the Liquidity Decree;
- (ii) shall have a duration not exceeding 6 years, eventually with a pre-amortisation period (if so requested by the borrower) not exceeding 24 months;
- (iii) shall be used to support personnel costs, investments or working capital involved in facilities and activities located in Italy, as documented and certified by the legal representative of the borrower;
- (iv) shall increase borrower's debt exposure (consequently, refinancings shall be deemed to be excluded from the scope of SACE guarantee)⁴

² However, the main instrument for supporting SMEs is still SME Guarantee Fund. Indeed, it is provided that only SMEs that have already utilised in full their access to the SME Guarantee Fund will be granted access also to the SACE guarantee.

³ If the company started its activity after 31 December 2018, reference is to be made to the expected personnel costs for the first two years of activity, as documented and certified by the legal representative of the company.

⁴ In line with government announcements, the rationale seems to inject further liquidity into the system.



In case the borrower has been granted with several financings secured by SACE guarantee, or by other public guarantees, the amounts of such financings must be aggregated. In the same way, if other companies belonging to the same group of the borrower have been granted of more financings secured by SACE guarantee, the relevant amounts must be aggregated too.

SACE guarantee: subjective scope of application of the Liquidity Decree

As mentioned above, one of the major changes introduced by the Liquidity Decree concerns the possibility for SACE to guarantee also enterprises other than SMEs - provided that (i) as of 31 December 2019 they are not "*undertaking in difficulty*" within the meaning ascribed to this term in the Regulation (EU) no. 651/2014 of 17 June 2014⁵, and they are "*performing*" as of 29 February 2020⁶ - - with different coverage percentages depending on employees and turnover value, which must be calculated on a consolidated basis in case the relevant enterprise belongs to a group. It is therefore provided that:

- for enterprises with less than 5000 employees in Italy and a turnover value up to EUR 1.5 billion, SACE guarantee covers up to 90% of the residual amount of the loan;
- for enterprises with a turnover value between EUR 1.5 billion and EUR 5 billion or with more than 5000 employees in Italy, SACE guarantee covers up to 80% of the residual amount of the loan (which can be increased up to 90% by a decree of the Ministry of Economy and Finance ("MEF"), as will be explained below in paragraph concerning the application procedure); e

⁵ According to EU Regulation n. 651/2014 of 17 June 2014, 'undertaking in difficulty' means an undertaking in respect of which at least one of the following circumstances occurs:

- a) In the case of a limited liability company (other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME within 7 years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital. For the purposes of this provision, 'limited liability company' refers in particular to the types of company mentioned in Annex I of Directive 2013/34/EU and 'share capital' includes, where relevant, any share premium;
- b) In the case of a company where at least some members have unlimited liability for the debt of the company (other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME within 7 years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses. For the purposes of this provision, 'a company where at least some members have unlimited liability for the debt of the company' refers in particular to the types of company mentioned in Annex II of Directive 2013/34/EU;
- c) Where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors;
- d) Where the undertaking has received rescue aid and has not yet reimbursed the loan or terminated the guarantee, or has received restructuring aid and is still subject to a restructuring plan;
- e) In the case of an undertaking that is not an SME, where, for the past two years:
 - 1) the undertaking's book debt to equity ratio has been greater than 7,5 and
 - 2) the undertaking's EBITDA interest coverage ratio has been below 1,0;

⁶ In this respect, undertaking must not be included among banks' impaired exposures, as defined under European law, as of 29 February 2020.



- for enterprises with a turnover value exceeding €5 billion, SACE guarantee covers up to 70% of the residual amount of the loan (which can be increased up to 80% by the MEF decree, as will be explained below in paragraph concerning the application procedure).

Enterprises shall undertake - together with any other company based in Italy belonging to the same group - not to distribute dividends and not to repurchase shares during 2020, and to manage employment levels through trade union agreements. The financing, as mentioned above, must be used to support personnel costs, investments or working capital involved in production plants and activities located in Italy, and the legal representative of the company must provide evidence of such use.

These are provisions which could be included in the documents governing the financing, and which must be properly assessed before applying for the guarantee. It cannot be excluded that the borrower and, where relevant, the members of its group, may be required to (a) keep suitable documentation in this regard, in the event of any further audits, or (b) provide the lender with such documentation upon request or during following disbursements (as in the case of "*Stato Avanzamento Lavori*" financings).

SACE guarantee: costs

The cost of the guarantee is diversified, and shall be paid through an annual fee - to be calculated as a percentage of the guaranteed amount - equal to:

- as per SME financings, 25 *basis points* during the first year, 50 *basis points* during the second and third year, 100 *basis points* during the fourth, fifth and sixth year; and
- as per Mid-Cap financings, 50 *basis points* during the first year, 100 *basis points* during the second and third year, 200 *basis points* during the fourth, fifth and sixth year.

Although the guarantee is not granted free-of-charge, the legislator aims to achieve a reduction in the cost of the financings - thanks to SACE's support. Indeed, in order to benefit from the guarantee, the lender is required to provide evidence that the cost of the financing covered by the guarantee is lower than the cost which the same would have required for the same financings, but without SME guarantee. This should lead to significant cost savings compared to financings not covered by SACE guarantee, especially in the first years, when the cost of the guarantee is lower.

SACE guarantee: application procedure

The legislator set forth different criteria to apply for SACE guarantee, providing additional requirements for enterprises with more than 5,000 employees in Italy and with a turnover value exceeding 1.5 billion euros.

For enterprises which do not exceed the abovementioned thresholds:

- request for financing guaranteed by SACE must be submitted to a lender (or a *pool* of lenders), together with evidence that relevant requirements are met by the applicant company;
- in the event of a positive resolution to grant the financing, the lender shall transmit the request to SACE, also providing evidence that:
 - fees are limited to the amount necessary to cover incurred costs;
 - the cost of the financing covered by the guarantee is lower than the cost that the lender would have required for financings with the same characteristics, but without SACE guarantee; and



- following the disbursement of the loan, the total amount of borrower's debt exposures towards the bank is higher than the exposures held by the same at the date of entry into force of the Liquidity Decree (adjusted for the reductions in exposures that occurred between the two dates as a result of the contractual settlement established between the parties, before the entry into force of the Liquidity Decree).
- Following lender's resolution, SACE grants the guarantee and the lender disburses the requested financing.

In case the borrower has employees or turnover exceeding the abovementioned thresholds, issuance of the guarantee is also subject to a decision taken through a decree of MEF. Indeed, it is provided that:

- once SACE has completed its assessment, the request shall be transmitted to MEF;
- on the basis of the assessment carried out by SACE, and taking into account the role that the enterprise has with respect to the Italian economy (technological development, logistics and supply network, critical and strategic infrastructure, impact on employment levels and labour market and/or relevant influence within a strategic production chain), MEF, having heard the Ministry of Economic Development, issues a decree deciding whether or not to grant the guarantee;

through such decree, MEF may decide to raise the guarantee thresholds up to the percentage limit immediately above (i.e. up to 80% or 90%, depending on company's employees and turnover value), on condition that specific commitments and requirements are met by the company, in relation to strategic areas and profiles.

2) SME GUARANTEE FUND

SME Guarantee Fund: extension to non-performing enterprises

The Liquidity Decree follows the measures adopted by the Healing Italy Decree with respect to SME Guarantee Fund - whose support is now extended until 31 December 2020 - and strengthens them. First of all, new categories of enterprises are now eligible for the measure.

The employment level referred to in "SMEs" definition set forth in European Commission Recommendation no. 2003/361/EC of 6 May 2003 is superseded, because also Mid-Cap enterprises – which has a number of employees not exceeding 499 - can now access to the measure (and, therefore, superseding the limit of 250 employees referred to in the aforementioned Recommendation).

An important provision is the extension of the measure to non-performing enterprises, meaning:

- enterprises whose exposures towards the lender, as of the date of application for the guarantee, are classified as "*unlikely-to-pay*"⁷ (*inadempienze probabili*) or "*past due or impaired*"⁸ (*scadute*)

⁷ Pursuant to Bank of Italy Circular No. 272 of 30 July 2008, exposures are classified as unlikely to pay if the bank considers unlikely "*that, without recourse to actions such as the enforcement of guarantees, the debtor will fully repay its debt (in principal and/or interest). This assessment must be made regardless of any overdue and unpaid amounts (or instalments)*"

⁸ Pursuant to Circular No. 272 of 30 July 2008 of the Bank of Italy, the "*exposures, other than those classified as non-performing or unlikely to pay, which - at the reference date- are past due (scadute) or in overdraft (sconfinanti)*" are classified as past due or impaired.



o sconfinanti deteriorate) (but not as "non-performing"⁹ (*sofferenze*)), provided that such classification is not earlier than 31 January 2020; and

- enterprises which, after 31 December 2019, were admitted to a *concordato con continuità aziendale* (article 186-bis of the Italian Bankruptcy Law), entered into an *accordo di ristrutturazione* (article 182-bis of the Italian Bankruptcy Law) or submitted a *piano attestato di risanamento* (article 67 of the Italian Bankruptcy Law). However, an adequate performance of the relevant enterprise during the execution of such recovery measures is required, since, on the date of entry into force of the Liquidity Decree (i) its exposures shall no longer be classified as impaired (*esposizioni deteriorate*); (ii) there must be no amounts in arrears after the application of the measures; and (iii) the bank must be able to reasonably assume that, on the basis of prudential supervision rules, exposures will be repaid in full at maturity.

SME guarantee fund: increasing coverage percentage

The Liquidity Decree further increases coverage percentages - already significantly increased by the Healing Italy Decree - providing¹⁰:

- a) subject to authorisation by the European Commission, an increase in the coverage percentage of the direct guarantee up to 100% for financing within 25,000 euro (or, if lower, within 25% of borrower's turnover) with at least 2 years of pre-amortisation and duration of at least 6 years;
- b) subject to authorisation by the European Commission (the percentages set out in the Healing Italy Decree remain applicable until such authorisation), an increase in the coverage percentage of direct guarantees up to 90% (compared to 80% of the Healing Italy Decree) of the amount of each financing, but with the following sub-limits:
 - the total amount of the guaranteed financing cannot exceed, alternatively:
 - (i) twice the annual salary costs (including social security contributions and the cost of personnel working on the company's site but formally on the payroll of subcontractors) for 2019 or the last year available¹¹;
 - (ii) 25 per cent of total turnover for 2019; o
 - (iii) working capital costs and investment costs expected for the following 18 months, in the case of SMEs, and for the following 12 months, in the case of Mid-Cap (in both cases to be self-certified pursuant to Presidential Decree 445/2000);
 - financing duration cannot exceed 72 months.
- c) only for enterprises with an amount of revenue not exceeding 3.2 million euros, and provided that the direct guarantee is aggregated with an additional guarantee granted by the Confidi or any other authorised entity, an increase of the coverage percentage of the direct guarantee (referred to under point b) above) up to 100% of the amount of each financing. However, such provision is still subject to specific authorization from the European Commission;
- d) subject to authorisation by the European Commission (the percentages set out in the Healing Italy Decree remain applicable until such authorisation), an increase in the reinsurance coverage

⁹ Pursuant to Bank of Italy Circular No. 272 of 30 July 2008, "exposures "in cash" (*per cassa*) and "off-balance" (*fuori bilancio*) towards a borrower which is insolvent (even if not judicially ascertained) or in a substantially comparable situation are classified as non-performing, regardless of any loss forecasts made by the bank"

¹⁰ The increases indicated will be effective only after approval by the European Commission pursuant to Article 108 of the TFEU. Until then, the previous percentages referred to in the Healing Italy Decree remain applicable.

¹¹ As per undertakings established on or after 1 January 2019, reference is to be made to the annual salary costs foreseen for the first two years of activity.



percentage up to 100% (compared to 90% in the Healing Italy Decree) of the amount guaranteed by Confidi or another guarantee fund, provided that the guarantees granted by the latter do not exceed a maximum coverage percentage of 90%, and do not provide for fees that represent a consideration for the credit risk.

- e) an increase of the maximum guaranteed amount per enterprise up to 5 million euros, subject to the limits indicated above.

Major amendments also concern the guarantees granted by the Fund on loan portfolios, which already included Mid-Cap. As per guarantees related to loan portfolios (even without amortisation plan) dedicated to companies damaged by Covid-19 emergency, whose 20% (at least) is composed by enterprises with a rating not higher than Standard's and Poor's class "BB" (the valuation is to be made by the lender), the following provisions have been set forth by the Liquidity Decree:

- eligible portfolios have been increased up to 500 million euros;
- the guarantee is eligible also for financings (having the characteristics referred to in point (b) above) which have been already disbursed before the former being requested (but after 31 January 2020);
- an increase in (i) the coverage percentage up to 90% of the *junior* tranche of the loan portfolio, within the limits, also increased, (a) of 15% of the amount of the loan portfolio, or (b) 18% in the case of loans granted for research, development and innovation projects and/or investment programmes;
- with reference to single loans, the coverage percentage is increased up to 90% of the recorded loss;
- no creditworthiness assessment by the Fund is required (but lenders' valuation is still required);
- a simplification for the assessment of the "*detachment point and thickness*" (*punto di stacco e spessore*) ¹², that can now be made according to the internal models of the financing entity.

For loan portfolios dedicated to enterprises with different rating, but damaged by COVID-19 emergency, or that are dedicated to specific sectors/branches affected by the epidemic for at least 60%, the provisions of the Healing Italy Decree have not been amended (increase of the Fund guarantee granted to cover the *junior* tranche up to 50% - increasable by a further 20% in case of multiple guarantors).

SMEs Guarantee Fund: extension of the guarantee to existing financings and to renegotiation and consolidation transactions

The Liquidity Decree also extends the guarantee of the SME Guarantee Fund to financings that have already been "perfected and disbursed" (i) after 31 January 2020 and (ii) no later than 3 months after the date of the request.

There are no changes with respect to renegotiation and consolidation carried out with the same bank (provided that the relevant lender grants new financing for at least 10% of the residual outstanding debt) but in these cases direct guarantee is granted for an amount equal to 80% of the financing, while reinsurance is granted for an amount equal to 90% of the amount guaranteed by the Confidi or other guarantee fund (provided that the guarantees issued by these latter do not exceed the maximum

¹² meaning, respectively, the point that determines the distinction between the junior tranche and the tranches above it (senior tranches and mezzanine tranches) and the percentage given by the ratio between a certain tranche and the nominal value of the loan portfolio.



coverage percentage of 80%); moreover, in case of suspension and extension of loans which were already guaranteed by the Fund, the relevant guarantee is automatically extended.

No amendments have been made with respect to *hotellerie* and tourism sectors. Fund's guarantee can be aggregated with other kind of guarantees, as an exception to the current limits laid down in Fund's regulation, provided that the relevant financing has a duration of at least 10 years and is granted for an amount exceeding Euro 500,000.

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