



Client Alert | Corporate & Commercial

Italy

Coronavirus emergency: permitted and suspended business activities

April 2020

[**IMPORTANT NOTE:** This document is updated as at 28 April at 3 p.m., given that the state of emergency and the related regulatory framework are constantly evolving on a daily basis, the contents of this memorandum may be subject to further changes].

1. Foreword

Given the extraordinary situation related to the spread of the COVID-19 virus, there have been a series of regulatory interventions introducing urgent measures for the containment and management of the COVID-19 epidemiological emergency, which have significantly affected all industrial and commercial production activities carried out throughout Italy, in some cases providing for the suspension of commercial activities.

2. Relevant regulatory interventions to manage the Coronavirus emergency

For the purposes hereof, it is first of all necessary to make reference to Decree Law No. 6 of 23 February 2020, converted into Law No. 13 of 5 March 2020 ("[D.L. 6/20](#)"), which provides that the competent authorities may (and in some cases must) adopt "*any appropriate and proportionate measures to contain and manage the evolution of the epidemiological situation*"¹.

¹ Measures that can be adopted include the following: prohibition to leave the municipality or area concerned for all persons however present in the municipality or area; application of the quarantine measure with active surveillance to people who have come into close contact with confirmed cases of widespread infectious disease; shutdown of all commercial activities, with the exception of commercial activities aimed at the sale of basic necessities; suspension of work activities for companies, except for those providing essential services and public utilities and those that can be carried out at home; suspension or limitation of the performance of work activities in the municipality or area concerned as well as of work activities of the inhabitants of said municipalities or areas carried out outside the municipality or area indicated, subject to specific exceptions, including with regard to the conditions, limits and methods of use of smart working.

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Pursuant to Article 3, paragraph 1 of D.L. 6/20, the aforesaid measures have been adopted by one or more decrees of the President of the Council of Ministers (“**DPCM**”); this is without prejudice to the possibility of adopting extraordinary and urgent ordinances by the Minister of Health, as well as emergency measures by mayors and regions.

For the purpose of implementing D.L. 6/20, the following decrees have been issued: DPMC of 23 February 2020, DPMC of 25 February 2020, DPMC of 1 March 2020, DPMC of 4 March 2020, DPMC of 8 March 2020², DPMC of 9 March 2020 and DPMC of 11 March 2020³ as well as DPMC of 22 March 2020⁴.

In addition, Decree Law No. 19 of 25 March 2020 (“[D.L. 19/20](#)”) has established a new framework of regulatory sources to manage the Coronavirus emergency, providing for the possibility to adopt - in specific parts of the national territory or, if necessary, on the whole of it - containment measures through DPCM and, to a limited extent, with measures of other authorities (prefects, mayors, regions, Minister of Health), and almost entirely repeals D.L. 6/20. However, Article 2, paragraph 3, of D.L. 19/20 provides as follows: **“This is without prejudice to the effects produced and acts adopted on the basis of decrees and ordinances issued pursuant to Decree Law No. 6 of 23 February 2020, converted, with amendments, by Law No. 13 of 5 March 2020, or pursuant to Article 32 of Law No. 833 of 23 December 1978. The measures already adopted by the decrees of the President of the Council of Ministers adopted on 8 March 2020, 9 March 2020, 11 March 2020 and 22 March 2020, as in force on the date of entry into force of this decree, shall continue to apply in accordance with their original terms. The other measures, still in force on the same date, shall continue to apply for a further period of ten days”**.

Finally, on 10 April 2020, a new DPCM has been issued which, among others, has abrogated, with effect from 14 April 2020, some of the previous decrees, and namely, the DPCM 8 March 2020, DPCM 9 March 2020, DPCM 11 March 2020 and DPCM 22 March 2020.

Lastly, on 26 April 2020, for the same purpose of implementing D.L. 6/20, an ulterior DPCM has been issued which, with effect from 4 May 2020⁵, has replaced the previous DPCM 10 April 2020. The provisions of the DPCM 26 April 2020 will be effective until 17 May 2020.

² The provisions of DPCM of 1 March and 4 March 2020 have ceased to have effect from the date of effect of the provisions of the DPCM of 8 March 2020.

³ With the DPCM of 11 March 2020 (effective from 12 March 2020 to 25 March 2020, extended to 3 April 2020 by the DPCM of 22 March 2020), the provisions of the DPCM of 8 March 2020 and 9 March 2020 cease to be effective, while the provisions of the DPCM of 11 March 2020 shall apply cumulatively with those of the DPCM of 22 March 2020.

⁴ The abovementioned DPCM were accompanied by measures issued by mayors, regions and ordinances of the Ministry of Health.

⁵ This is without prejudice to the paragraphs 7 and 9 of Article 2 which already apply starting from 27 April 2020, cumulatively with the provisions of the DPCM 10 April 2020.

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2.1. The DPCM 26 April 2020 on the shutdown of commercial retail activities

The DPCM 26 April 2020, by substantially restating the provisions of the previous DPCM 10 April 2020, has set out, under Article 1, paragraph 1, let. z), the suspension of certain commercial activities; as regards those activities not suspended it provides in particular that the respect of the interpersonal safety distance of one metre must be guaranteed.

In particular, Article 1, paragraph 1, let. z), provides as follows:

“z) retail trade activities shall be suspended, with the exception of the food and basic necessities sales activities identified in Annex 1, both in the context of neighbourhood shops and in the context of medium and large-scale distribution, including those in shopping centres, provided that access is allowed only to those activities. Markets are closed, regardless of the type of activity carried out, with the exception of activities aimed at the sale of foodstuffs only. Newsstands, tobacconists, pharmacies and para-pharmacies shall remain open. In any case, the interpersonal safety distance of one meter must be guaranteed”.

Annex 1 of DPCM 26 April 2020, which lists activities for the sale of food and basic necessities, makes explicit reference, *inter alia*, to the retail trade of:

- foodstuffs;
- fuel;
- computers and telecommunications equipment;
- newspapers, magazines and periodicals
- any type of product carried out via the Internet (television, mail-order, radio, telephone and vending machines).

In addition to what was already provided for in the previous DPCM 10 April 2020, the DPCM 26 April 2020 has established the re-opening of the retail trade activities of flowers, plants, seeds and fertilizers.

2.2 The DPCM of 26 April 2020 on industrial activities and on wholesale commercial activities

In addition to the provisions set out under Article 1 of the DPMC of 26 April 2020 for commercial retail activities, as far as industrial and commercial activities are concerned, this DPCM provided for a greater openness compared to the previous DPCM of 10 April 2020. In fact, Article 2 provides in particular that:

- a. all industrial and commercial production activities are suspended, with the exception of those listed in Annex 3 (the **“Table”**); however, said production activities may still continue if organised remotely or using smart working;

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- b. activities that provide public utilities as well as essential services referred to in Law No. 146 of 12 June 1990, are anyway allowed⁶;
- c. production, transport, marketing and delivery of pharmaceuticals, health technology and medical-surgical devices as well as agricultural and food products are still allowed. Any activity that is in any case functional to deal with the emergency is also allowed.

Compared to the DPCM of 10 April 2020, Article 2 of the DPCM of 26 April 2020 has, *inter alia*:

- increased the number of activities included in the Table by introducing, for instance, certain wholesale commercial activities; and
- deleted the references to production chains and activities with a continuous production cycle due to the extension of the activities listed in the Table.

Finally, please consider that activities for which suspension is not provided (both retail and industrial activities) shall be, in any case, carried out in compliance with

- (a) the “*Shared protocol for the regulation of measures to combat and contain the spread of the COVID-19 virus in the workplace*” signed on 24 April 2020 between the Government and the social partners (set out in Annex 6 of the DPCM);
- (b) the “*Shared protocol for the regulation to the containment of the spread of the COVID-19 at construction sites*” signed on 24 April 2020 between the Minister for Infrastructure and Transport, the Minister of Labour and Social Policy and the social partners (set out in Annex 7 of the DPCM); and
- (c) the “*Shared protocol for the regulation to the containment of the spread of the COVID-19 in the transport and logistic sector*”, signed on 20 March 2020 (set out in Annex 8 of the DPCM).

Failure to implement the above protocols which does not ensure adequate levels of protection shall result in the suspension of the activity until safety conditions are restored.

2.2.1 Focus: shipment of goods in stock

The DPCM of 26 April 2020 has also confirmed the line of the previous DPCM with reference to the shipment of goods in stock in the warehouse of companies whose activities have been or remain suspended. In this respect, Article 2, paragraph 8, second sentence, provides as follows:

“It is allowed, upon communication to the Prefect, the shipment to third parties of goods in stock in warehouse as well as the receipt in stock of goods and supplies.”

⁶ Without prejudice to the provisions of Article 1 for museums and other cultural institutions and places (for which the services of opening to the public are suspended), as well as for services concerning education (for which remotely education is provided).



Moreover, with reference to companies whose activities have been suspended and prior communication to the Prefect, said Article 2, paragraph 8, first sentence, also provides as follows:

“For the suspended production activities, the access to the company premises of employees or delegated third parties to carry out surveillance activities, conservation and maintenance activities, payment management as well as cleaning and sanitation activities is allowed, subject to notification to the Prefect.”

It being understood, however, that all companies whose activities should be (*rectius* remain) suspended as a result of the amendment of the Table provided for by the DPCM of 26 April 2020, or for any other reason, shall complete the activities necessary for the suspension, including the shipment of the goods in stock, within 3 days from the adoption of the amending decree or, in any case, of the measure determining the suspension.

2.2.2 Companies which may resume their business activities

With particular reference to the activities previously suspended which, starting from 4 May, will resume their business activities, Article 2, paragraph 10, DPCM 26 April 2020 provides that:

*“Companies which will resume their activities starting from 4 May 2020, **may carry out all the activities required prior to the re-opening starting from 27 April 2020**”.*

Moreover, Article 2, paragraph 11, DPCM 26 April 2020 also provides that:

“To ensure that production activities are carried out under secure conditions, the Regions monitor on a daily basis the epidemiological situation in their territories and, in relation to this trend, the conditions of adequacy of the regional health system. The monitoring data are communicated daily by the Regions to the Minister of Health, the Higher Institute of Health and the technical-scientific committee referred to in the ordinance of the Head of the Department of Civil Protection of 3 February 2020, no. 630, and subsequent amendments. In the cases where the monitoring reveals an aggravation of the health risk, identified according to the principles for monitoring health risk referred to in Annex 10 and according to the criteria established by the Minister of Health within five days from 27 April 2020, the President of the Region shall promptly propose to the Minister of Health, for the immediate exercise of the powers referred to in Article 2, paragraph 2, of Decree-Law of 25 March 2020, no. 19, the restrictive measures necessary and urgent for the production activities of the areas of the regional territory specifically affected by the aggravation”.

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This article is for information purposes only and is not, and cannot be intended as, a professional opinion on the topics dealt with.

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