

22 May 2020

## Law Decree no. 34 of 19 May 2020: Strengthening of innovative start-ups ecosystem

With Law Decree no. 34 dated 19 May 2020, published in the Official Gazette no. 128 of 19 May 2020 (the "**Rilancio Decree**") the Italian Government implemented several measures to support the Italian economy, which is seriously affected by the continuing epidemiological emergency of Covid-19.

The Rilancio Decree devotes particular attention to measures supporting and strengthening the ecosystem of innovation, venture capital and research. The sector of **innovative start-ups**<sup>1</sup> and **innovative SMEs**<sup>2</sup> was not consistently taken into account in the previous support measures set out in Law Decree no.18 dated 17 March 2020 ("**Cura Italia Decree**") and in the Law Decree no. 23 dated 8 April 2020 (the "**Liquidity Decree**"). See our newsletters of [18 March 2020](#) and [1 April 2020](#).

Set out below is a brief summary of the main measures of the Rilancio Decree regarding innovative start-ups and SMEs, and the research and innovation ecosystem.

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<sup>1</sup> The definition of **innovative start-ups** is set out under Art. 25 of Law Decree no. 179/2012, according to which innovative start-ups are those companies registered in the relevant special section of the Company's Register, also established in the form of cooperatives not listed on a regulated market, which (i) have been established for no more than sixty months; (ii) are settled in Italy or in one of the Member States of the European Union or in States party to the Agreement on the European Economic Area, provided that they have a legal office or a branch in Italy; (iii) have a total annual production value (starting from the second year of activity) lower than euro 5 million; (iv) do not distribute, and have not distributed, gains; (v) have as their exclusive or predominant company object the development, production and marketing of innovative products or services with high technological value; (vi) do not result from a merger, spin-off or disposal of company or the branch of a business; and (vii) meet at least one of the following additional requirements: (1) research and development expenditures are equal to or greater than 15% of the higher of the cost or total production value of the innovative start-up; 2) they have employees or collaborators, in a percentage equal to or greater than 1/3 of the total workforce, who have completed or are completing a PhD at an Italian or foreign university, or who hold a university degree and have carried out, for at least three years, certified research activities at public or private research institutes, in Italy or abroad, or, they hold personnel in a percentage equal to or greater than 2/3 of the total workforce, who hold a master's degree; 3) they are the holder or depositories or licensee of at least one exclusive industrial rights or they hold the rights relating to a registered original computer program, provided that such rights are directly related to the company objects and activities.

<sup>2</sup> The definition of **innovative SMEs** is set out under Art. 4, paragraph 1, of Law Decree no. 3/2015, according to which innovative SMEs are those companies which are registered in the relevant special section of the Company's Register, which: (i) fall within the definition of an SME, as set out in the Recommendation of the European Commission dated 6 May 2003; (ii) are settled in Italy or in one of the Member States of the European Union or in States participating in the Agreement on the European Economic Area, provided that they have a production facility or a branch in Italy; (iii) have the latest financial statements and any consolidated financial statements drafted by an auditor or audit firm registered in the Register of Auditors; (iv) are not registered in the special section of the Company's Register reserved for innovative start-ups; and (v) meet at least two of these three requirements: (1) 3% of the total costs must be attributable to research, development and innovation activities; (2) 1/3 of the team must have a master's degree or 1/5 of the team must be PhD students, PhDs or researchers; or (3) they must own a form of intellectual property right or *software* protection.

## SUPPORT MEASURES TO INNOVATIVE START-UPS AND INNOVATION

### Strengthening of innovative start-ups ecosystem<sup>3</sup> - Economic support measures

The goal of strengthening the institutional support to the early stages and development phases of innovative start-ups is pursued by two directives:

- (i) first, to support the liquidity needs of innovative start-ups in the early stages of their life cycle, the "**Smart&Start Italia**" measure is amended<sup>4</sup>, and the relevant budget is increased by an additional EUR **100 million** for 2020. For the same purpose, for the year 2020, additional resources of EUR 200 million<sup>5</sup> are allocated to the "**Venture Capital Support Fund**", with the aim to support investments in innovative start-up and SMEs, including through the subscription of equity **financial instruments** or convertible bonds, as well as other debt financial instruments with the possibility for the investor of repaying the contribution made. The operational procedures for the implementation of such measures, including the co-investment relationship between the resources allocated by the Rilancio Decree and the resources allocated by qualified investors, will be set out under a decree of the Ministry of Economic Development (the "**Ministry**"), to be adopted within 60 days of the entry into force of the Rilancio Decree.
- (ii) secondly, in order to support innovative start-ups also during the **incubation/acceleration process**, this provision provides for the allocation of EUR **10 million**<sup>6</sup> in order to fund non-repayable grants to innovative start-ups for the acquisition of **acceleration and incubation services** provided by incubators, accelerators, *innovation hubs*, *business angels* and other public or private entities operating in the *venture capital* sector (so-called **Smart Money Measure**). In the current economic downturn, this measure is aimed at granting - especially to innovative start-ups which are not mature enough to take part to the Smart&Start Italia financing program - the necessary liquidity to access the above mentioned incubation and acceleration programs.

Finally, the Rilancio Decree guarantees further economic support to innovative start-ups by reserving them EUR 200 million of the so-called **SMEs Guarantee Fund**<sup>7</sup>, already subject to various support measures set out under the Cura Italia Decree and the Liquidity Decree.

<sup>3</sup> Art. 38, paragraphs 1-3.

<sup>4</sup> The Smart&Start Italia program was introduced by Ministerial Decree of 24 September 2014, as amended by Ministerial Decree of 9 August 2017. Moreover, an additional news of Rilancio Decree is contained under Art. 38, paragraph 11, which provides for the extension of privileged treatment, initially reserved only to start-ups located in the Southern regions of the country, to start-ups located in the so-called "territory of the seismic crater of central Italy".

<sup>5</sup> Art. 38, paragraph 3. The Venture Capital support Fund was established pursuant to Art. 1, paragraph 209 of Law no. 145 of 2018.

<sup>6</sup> Art. 38, paragraph 2.

<sup>7</sup> Art. 38, paragraph 6. The so-called SMEs Guarantee Fund was established pursuant to Art. 2, paragraph 100, letter a) of Law no. 662 of 23 December 1996.

<p><b>Strengthening of innovative start-ups ecosystem<sup>8</sup>- Operational measures</b></p>	<p>To limit the negative economic effects produced on the venture capital sector in 2020, the <b>registration of innovative start-ups within the special section of the Company's Register<sup>9</sup></b> is <b>extended by one year</b> (<i>i.e.</i> from 5 years to 6 years from the date of establishment).</p> <p>Moreover, the terms provided for access to or withdrawal from public incentives are also <b>extended by 12 months</b>. However, this extension <b>does not apply to tax and/or contribution benefits</b> provided by the current legislation.</p> <p>In addition, the Rilancio Decree aims to encourage research and development activities, also to cope with the Covid-19 emergency and, to this end, assimilates innovative start-ups - in the case of so-called <b>extra muros research contracts</b> - with universities and research centers. Therefore, the costs incurred by innovative start-ups for research and development activities through <i>extra muros</i> contracts will also form the tax basis for calculating the tax credit, pursuant to Law no. 160 of 27 December 2019, for 150% of their amount.</p>
<p><b>Tax incentives for investments by individuals in innovative start-ups and SMEs<sup>10</sup></b></p>	<p>The Rilancio Decree provides, for <b>natural persons</b> only, who invest in innovative start-ups or SMEs, a <b>tax deduction of 50%</b> of the amount invested by each taxpayer in the corporate capital of one or more innovative start-ups or SMEs, either directly or through collective investments schemes ("<b>UCITS</b>"), which mainly invest in innovative start-ups or SMEs.</p> <p>The <b>maximum deductible investment</b> (i) may not exceed, for each tax period, EUR 100,000, and (ii) must be maintained by the same taxpayer for at least <b>three years</b>. This measure applies exclusively to innovative start-ups and SMEs registered in the respective special sections of the Company's Register<sup>11</sup>.</p> <p>This measure, granted in accordance with the European Commission Regulation on <i>de minimis</i> aid, aims to <b>encourage the raising of capital</b> for innovative start-ups and SMEs with low production values to strengthen their capitalization and support their growth process.</p>

<sup>8</sup> Article 38, paragraphs 4-5.

<sup>9</sup> Art. 38, paragraph 5. The special section of the Company's Register, in which innovative start-ups are registered for 60 months from the date of their incorporation, was established pursuant to Art. 25, paragraph 2 of Law Decree no. 179 of 18 October 2012.

<sup>10</sup> Art. 38, paragraphs 7-9.

<sup>11</sup> Art. 38, paragraph 8.

<p><b>Incentives for investments in the real economy: long-term savings plans (<i>piani di risparmio a lungo termine</i> – PIR)<sup>12</sup></b></p>	<p>This measure is intended to encourage <b>investments</b>, both in venture capital and in debt capital, <b>in the real economy</b> and, with particular reference to unlisted companies, is aimed at strengthening the system of <b>long-term savings plans</b> (PIR). To this end, the Rilancio Decree introduces a new type of individual savings plans (which complement the existing type): the so-called <b>alternative PIR</b>.</p> <p>To encourage investment towards small companies, this measure allows the creation of a <b>new type of PIR</b>, which is subject to different and higher limits on the amount of investment than those initially provided for in the PIR regulations set out in the 2017 Budget Law.</p> <p>Therefore, alternative PIR must invest at least <b>70%</b> of their total value in financial instruments issued by companies residing in the national territory and must also meet the following new requirements: (i) a restriction on the concentration of investments which is <b>increased to 20%</b> (compared to the 10% envisaged for traditional PIR) and (ii) the possibility of allocating amounts not exceeding EUR <b>150,000</b> per year and a total of EUR <b>1,500,000</b>. This last change will allow alternative PIR to be directed towards private banking networks.</p> <p>PIR may be set up by a broad <b>category of intermediaries</b>, for example through UCITs or alternative investment funds (AIFs), such as, <i>inter alia</i>, ELTIFs, private equity funds, private debt funds and credit funds. In particular, paragraph 2-ter of this article of the Rilancio Decree provides for <i>ad hoc</i> provisions for <b>PIRs set up through UCITs</b>.</p>
<p><b>Technological Transfer Fund and other urgent measures to support innovation<sup>13</sup></b></p>	<p>To ensure a lasting restart of the innovation ecosystem in Italy, the Rilancio Decree sets up the "<b>Technology Transfer Fund</b>", with an allowance of <b>EUR 500 million for 2020</b>.</p> <p>This fund will promote the collaboration of public and private entities in the implementation of innovation and spin-off projects and may make investments in the national innovation ecosystem, through <b>indirect participation in venture capital and/or debt capital</b> of innovative start-ups or SMEs.</p> <p>Moreover, to implement the above-mentioned interventions, the Rilancio Decree strengthens the powers of <b>ENEA</b> (National Agency for New Technologies, Energy and Sustainable Economic Development) through the establishment of the <b>Enea Tech foundation</b>, which is subject to the supervision of Ministry. The purpose of Enea Tech – whose allowance amounts to EUR 12 million for 2020 - will be to promote investments aimed at the integration of support initiatives in technology transfer and research and development, encouraging the participation (including financial) of companies, institutional investment funds or private individuals, public entities, etc..</p>

<sup>12</sup> Art. 136.

<sup>13</sup> Art. 42.

<p><b>Investors Visa for Italy<sup>14</sup>: reduction of the thresholds for attracting foreign investments</b></p>	<p>This measure aims to encourage the <b>"Investors Visa for Italy"</b> program, which was introduced under the 2017 Budget Law, to grant a new type of visa to non-EU citizens who wish to make significant investments in strategic areas for the Italian economy.</p> <p>In light of the limited use of the program, the Rilancio Decree intends to encourage its use, by <b>halving the financial thresholds for investments</b> towards joint-stock companies (it is sufficient to make investments of EUR 500,000, instead of the EUR 1 million previously provided for) and, in particular, to <b>innovative start-ups</b> (it is sufficient to invest EUR 250,000, instead of EUR 500,000 previously provided for).</p>
<p><b>Further relevant measures for innovative start-ups</b></p>	<p>The Rilancio Decree contains several other measures applicable to innovative start-ups and SMEs. Below are the main measures to support innovation, venture capital and research ecosystem:</p> <ul style="list-style-type: none"> <li>(i) In view of the current economic crisis, it is foreseen that all companies with revenues not exceeding euro 250 million (which may also include innovative start-ups) <b>are not required to pay</b> (i) the balance of the regional tax on productive activities (<b>IRAP</b>) relating to the tax period in progress as at 31 December 2019; and (ii) the first instalment of the advance payment of IRAP relating to the tax period following that in progress as at 31 December 2019<sup>15</sup>;</li> <li>(ii) A <b>non-repayable grant</b><sup>16</sup> is granted to individuals engaged in business activities and self-employees, who are registered for VAT (a category which could include founders or collaborators of innovative start-ups and SMEs) and who meet the following requirements: (i) they hold an amount of compensation or revenue, relating to the tax period 2019, not exceeding euro 5 million; and (ii) they have suffered a reduction in turnover and/or fees for the month of April 2020, to the extent that it is less than two thirds of the amount of turnover and fees for the month of April 2019. With respect to individuals who started business activities after 1 January 2019, this contribution is due even in the absence of the requirement of a reduction in turnover/fees.</li> <li>(iii) Following the example of other EU countries, the so-called <b>"First Playable Fund"</b> is established at the Ministry, with the aim to support the Italian production of video games<sup>17</sup>;</li> <li>(iv) For the year 2020, expenses for up to EUR 20 million are authorized for the setting-up of the so-called <b>"Center for research, innovation and technology transfer in the field of mobility and automotive"</b> located in Turin. This center will</li> </ul>

<sup>14</sup> Art. 38, paragraph 13.

<sup>15</sup> Art. 24.

<sup>16</sup> Art. 25.

<sup>17</sup> Art. 38, paragraphs 12-18.

encourage (i) collaboration with national and European research centers for the spreading of research and the transfer of knowledge, including through teaching and training activities; and (ii) collaborative research between businesses and research centers.

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