



20 August 2020

## The “August Decree”: Law Decree No. 104 issued on August 14, 2020

The Law Decree no. 104 issued on August 14, 2020 (the “**August Decree**”), published in the Official Gazette on August 14, 2020 and entered into force on August 15, 2020, introduced further support measures and extraordinary rules within the frame of the COVID-19 emergency legislation. This note provides a preliminary overview on certain provisions of the August Decree that are of interest for employers in the management of their personnel.

The August Decree follows the so-called **Cura Italia Decree** (DL 18/2020, converted into law with amendments by Law no. 27/2020) and the **Rilancio Decree** (DL 34/2020, converted into law with amendments by Law no. 77/2020).

### 1. COVID-19 SOCIAL SHOCK ABSORBERS – NEW MEASURES

#### CIGO, Ordinary Check (FIS/Solidarity Funds) and CIGD (Exceptional CIG scheme) <sup>1</sup>

- Introduction of additional **9 weeks (“First Set”) + 9 weeks (“Second Set”)** of COVID-19 social shock absorbers, i.e. CIGO, Ordinary Check or CIGD (depending on the scheme applicable to the employer) pursuant to the *Cura Italia Decree* as subsequently amended;
- The above **18 weeks** in the aggregate are linked to the period of time July 13, 2020 – December 31, 2020; if the employer availed itself of **social schemes already authorized pursuant to the *Cura Italia Decree*, the use of such schemes after July 12, 2020 shall be computed for the purpose of the First Set**;
- The 9 weeks falling under the Second Set:
  - ✓ will be granted only to employers that have been fully authorized to use the First Set;
  - ✓ are subject to the payment of a contribution equal to a percentage of the total compensation that would have been due to the employees for the suspended /reduced working hours; the amount of the contribution depends on the reduction of **the company’s turnover in the 2020 first half, if compared to the 2019 first half turnover**:
    - **18%**, if the employer suffered no reduction of the turnover;
    - **9%**, if the employer suffered a reduction of the turnover lower than 20%;
    - **0%**, if the employer suffered a reduction of the turnover equal to, or exceeding, 20% (or if the employer started running its business after January 1, 2019).

<sup>1</sup> Article 1, August Decree.

	<ul style="list-style-type: none"> <li>As regards the <u>information and consultation Union requirements</u>, the August Decree does not introduce new rules, therefore it is reasonable to sustain that the information and consultation rules and requirements set forth by the <i>Cura Italia</i> Decree currently in force will continue to apply;</li> <li><u>the application must be filed</u>: (1) as a general rule, by the end of the month following that of the reduction/suspension of the working activity; <i>but</i> (2) as a rule immediately applicable in the first phase, by the end of September 2020.</li> </ul>
<b>2. SOCIAL SECURITY CONTRIBUTIONS EXEMPTIONS/DISCOUNTED RATES</b>	
<b>Social security exemption for employers that will not apply for social schemes<sup>2</sup> (“Exemption # 1”)</b>	<ul style="list-style-type: none"> <li><u>Beneficiaries</u>: employers that (x) will not apply for the COVID-19 social shock absorbers pursuant to Article 1 of the August Decree; and (y) have already availed themselves of COVID-19 social schemes in May and June 2020 (even if partially used after July 12, 2020);</li> <li><u>Exemption</u>: social security contributions (excluding INAIL insurance premium) for the maximum term of 4 months in an amount not exceeding twice the subsidized working hours in May and June 2020;</li> <li><u>Term</u>: December 31, 2020</li> </ul>
<b>Social security exemption for employers that will hire open-ended employees<sup>3</sup> (“Exemption # 2”)</b>	<ul style="list-style-type: none"> <li><u>Beneficiaries</u>: employers that (x) will hire, after August 15, 2020, open-ended employees (excluding apprentices, domestic workers, and open-ended employees employed by the same company in the previous 6-month period); (y) will convert, after August 15, 2020, fixed-term contracts into open-ended contracts;</li> <li><u>Exemption</u>: social security contributions (excluding INAIL insurance premium) for the maximum term of 6 months running from the hiring in an amount not exceeding Euro 8,060 on a yearly basis;</li> <li><u>Term</u>: December 31, 2020</li> </ul>
<b>Social security exemption for employers that will hire fixed-term employees in certain sectors<sup>4</sup> (“Exemption # 3”)</b>	<ul style="list-style-type: none"> <li><u>Relevant sectors</u>: tourism and thermal baths, upon fixed-term/seasonal hirings</li> <li><u>Exemption</u>: social security contributions (excluding INAIL insurance premium) for the term of the contract and in any case for the maximum term of 3 months</li> <li><u>Term</u>: December 31, 2020</li> </ul>
<b>Social security discount in Southern Regions<sup>5</sup></b>	<ul style="list-style-type: none"> <li><u>Beneficiaries</u>: employers with employees whose working place is located in the following Regions: <i>Abruzzo, Basilicata, Calabria, Campania, Molise,</i></li> </ul>

<sup>2</sup> Article 3, August Decree.

<sup>3</sup> Article 6, August Decree.

<sup>4</sup> Article 7, August Decree.

<sup>5</sup> Article 27, August Decree.

	<p><i>Puglia, Sardegna e Sicilia</i><sup>6</sup>.</p> <ul style="list-style-type: none"> <li>▪ <u>Discounted rate</u>: 30% social security discount (excluding INAIL insurance premium)</li> <li>▪ <u>Term</u>: from October 1, 2020 until December 31, 2020</li> </ul>
<b>3. BAN ON DISMISSAL</b>	
<p><b>Previous rules introduced by the <i>Cura Italia</i> Decree<sup>7</sup></b></p>	<ul style="list-style-type: none"> <li>▪ Ban on collective and individual dismissals for business-related reasons <b>until August 17, 2020</b>;</li> <li>▪ Suspension of (x) the collective dismissal procedures commenced after February 23, 2020; and (y) the procedures for individual dismissals pursuant to article 7, law 604/66.</li> </ul>
<p><b>Current rules introduced by the August Decree<sup>8</sup></b></p>	<ul style="list-style-type: none"> <li>▪ The ban on collective and individual dismissals for business-related reasons continues to apply to employers that <b>have <u>not</u> fully used</b>: <ul style="list-style-type: none"> <li>- the COVID-19 social shock absorbers pursuant to Article 1 of the August Decree (see § 1.), <u>or</u></li> <li>- the Exemption # 1 (see § 2.)</li> </ul> </li> </ul> <p><b><u>Therefore, the term of the ban is not set to expire at a certain date, but depends on when the employer will cease the use of (i) the COVID-19 social scheme, or (ii) the social security exemption.</u></b></p> <ul style="list-style-type: none"> <li>▪ Likewise, and in line with the same terms and conditions, the August Decree confirms the suspension of: (x) the collective dismissal procedures commenced after February 23, 2020; and (y) the procedures for individual dismissals pursuant to article 7, law 604/66.</li> <li>▪ <b>Exceptions</b> to the ban: <ol style="list-style-type: none"> <li>1) “changes in a service contract”, where the employees of the former contractor are dismissed to be re-hired by the new contractor;</li> <li>2) winding-up following the liquidation of the company (provided that meanwhile no transactions qualifying as a transfer of business pursuant to article 2112 of the Italian Civil Code are implemented);</li> <li>3) company-level collective agreement (entered into with trade unions) incentivizing the exit of employees; in this peculiar and exception case, the employees who accept to terminate the employment will have access to the unemployment allowance (NASPI);</li> <li>4) bankruptcy with no temporary business continuation.</li> </ol> </li> </ul>

<sup>6</sup> The Umbria Region, that had been included amongst the Regions benefitting from the social security contributions discounted rate, seems currently excluded from the discount. Clarifications on this point are expected.

<sup>7</sup> Article 46, *Cura Italia* Decree as subsequently amended.

<sup>8</sup> Article 14, August Decree.

## 4. OTHER PROVISIONS OF RELEVANCE FOR EMPLOYERS

### Fixed-term contracts<sup>9</sup>

- The August Decree amended article 93 of the *Rilancio* Decree. According to the new provision, **until December 31, 2020** employers can renew or extend, once and for the maximum term of 12 months, fixed-term contracts **even in the absence of the mandatory reasons required by the law pursuant to article 19, paragraph 1, D. Lgs. 81/2015**, provided that the overall term does not exceed 24 months.
- The August Decree cancelled the rule introduced by the *Rilancio* Decree<sup>10</sup>, providing for the automatic extension of fixed-term contracts for a period of time corresponding to the suspension from work due to the COVID-19 pandemic.

### Fondo Nuove Competenze (“New Skills Fund”)

- The *Rilancio* Decree provided that, for year 2020, by entering into local or company bargaining collective agreement, employers can change the working time to face “*new organizational and productive needs of the company*”, and convert part of the working time into professional training funded by the so-called *Fondo Nuove Competenze* (“New Skills Fund”) set up at ministerial level<sup>11</sup>.
- The August Decree (i) extended such measure to year 2021; (ii) allocated additional financial resources; and (iii) expanded the purpose of the New Skills Fund, by providing that the change of the working time is allowed also to “*facilitate the re-employment of workers*”<sup>12</sup>.
- A ministerial decree fixing criteria and methods for the application of this measure is expected.

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<sup>9</sup> Article 8, August Decree.

Article 93 of the *Rilancio* Decree supplemented the fixed-term contracts special rules introduced by article 19-bis of the Cura Italia Decree pursuant to which, in derogation of mandatory provisions of law, employers under COVID-19 social coverage may renew or extend in the same period fixed-term contracts (and also temporary agency workers).

<sup>10</sup> Article 93, paragraph 1-bis, *Rilancio* Decree.

<sup>11</sup> Article 88, *Rilancio* Decree.

<sup>12</sup> Article 4, August Decree.