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LATEST DEVELOPMENTS ON THE COVID-19 OUTBREAK IN ITALY

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INTRODUCTION

As a consequence of the Covid-19 outbreak that is largely affecting any aspects of the national economy and people's lives, as in many other countries worldwide, over the past month the Italian Government has been dealing with the implementation of a broad set of measures aimed to contain the pandemic, ensure appropriate health care to patients, financially support the Italian industries and regulate business activities and private movements in the context of the current lockdown situation.

Some of these measures have been specifically intended for the aviation sector, where the airlines

have had to significantly reduce flight operations and many airports have been temporarily closed, thus causing significant adverse effects to the stakeholders at any level of the chain. Other measures have been provided for the whole Italian economic system and may therefore involve the aviation industry by operation of the general rules.

MEASURES FOR THE AVIATION SECTOR

Airports

The Ministry of Infrastructures and Transports has decided to guarantee only essential air transport services throughout the Italian territory

(e.g. mail and cargo services). Accordingly most of the Italian airports have been closed until 3 May 2020, except for those able to serve users with uniformity on the basis of their geographical position and infrastructure capacity (including Ancona, Bari, Bologna, Cagliari, Catania, Genova, Milan Malpensa, Naples, Palermo, Rome Fiumicino, Turin, Venice Marco Polo), plus Rome Ciampino for State flights and rescue/emergency services. Otherwise general aviation and private operations at different airports can be authorized exclusively for proven work requirements, situations of need or health reasons. In addition, any passengers on inbound flights departed from a foreign country are subject to a temperature check before the embarkation (which is denied in case of temperature) and after landing they are required to release a self-declaration whereby they must declare the reason of the travel and their residence/domicile in Italy. Subsequently passengers are obliged to stay in quarantine at their place of residence/domicile for a period of 14 days, during which regular surveillance inspections are carried out by the public health authorities.

Air Carriers

As mentioned the Government has provided a package of urgent measures to financially support the national economy, acting on the basis that the Covid-19 outbreak constitutes a natural and exceptional occurrence according to article 107, second paragraph, of the Treaty on the Functioning of the European Union (TFEU), so that public aids meant to prevent (or at least limit) relevant damages are to be considered compatible with the internal market. In particular, Italian licensed air carriers operating public service obligations are granted compensation for damages suffered as a direct consequence of the emergency in order to ensure the continuation of scheduled services to/from airports serving a peripheral or development region (under article 16 of Regulation EC No 1008/2008).

A further measure has been taken with regards to Alitalia (AZ), the major national airline which is currently undergoing a restructuring procedure (called “amministrazione straordinaria”, i.e. extraordinary administration).

It will be established a newco entirely owned by the Ministry of Economy and Finance (or by another State-owned vehicle) that should be the transferee of the AZ air transport business for the timeframe during which the AZ Commissioner will have to finalize the sale to an interested party. For the year 2020 the newco will receive an injection of funds up to Euro 500 million in order to fulfil the financial commitments of the airline throughout the IATA summer season and until the sale process will be completed by the AZ Commissioner.

261 Passenger Claims

Reference must be made to the Interpretative Guidelines published by the European Commission on EU passenger rights regulations in the context of the developing situation with Covid-19, with a main focus on flight cancellations.

The EU Commission Guidelines are entirely recalled by the Italian Civil Aviation Authority (ENAC). As commonly known in the sector, compensation does not apply in case of a flight cancellation made more than 14 days in advance or where the cancellation is caused by “extraordinary circumstances” that could not have been avoided even if all reasonable measures had been taken (pursuant to article 5 of Regulation EC No 261/2004). In this respect, the EU Commission is of the opinion that where public authorities take measures intended to contain the Covid-19 pandemic, such measures are by their nature unrelated to the normal course of activity of air carriers and are outside their actual control. Therefore, the condition of “extraordinary circumstances” should be considered fulfilled if public authorities either prohibit certain flights or ban the movement of people in a manner that practically excludes the possibility to operate the relevant flights.

This may also be the case, depending on the circumstances, for flights in the direction opposite to those flights directly concerned by the ban on the movement of people.

Also, a cancellation should be considered as caused by extraordinary circumstances where an airline decides to cancel the flight and proves that such decision was justified on grounds of protecting the health of its crew.

Drones

Acting as the national aviation regulatory body, ENAC has resolved to cope with the epidemic by way of special authorizations allowing the police forces to operate unmanned aerial vehicles (drones) for surveillance and monitoring functions over the movements of individuals in the Italian territory that may breach the general lockdown orders, which can only be waived in case of essential needs (such as the purchase of food, medicines and/or for unavoidable work requirements). Pursuant to article 744 of the Italian Navigation Code drones operated by local public authorities are not considered “State aircraft” and, therefore, are subject to the ordinary rules in terms of certification, registration and flight permits.

For such reason, during the health emergency the ENAC approach is in the sense of simplifying such regulatory procedures for drones with a maximum take-off weight up to 25 kg, so that the local police forces will be in a position to act in a timely manner and with less operational restrictions to

accomplish their tasks.

Furthermore, in the event of a shortage in the availability of drones ENAC has authorized the police forces to utilize vehicles and pilots belonging to private drone operators, on the basis of appropriate contractual arrangements between the parties and subject to these operators having already been certified by ENAC for the intended flight activities.

FINANCIAL SUPPORT TO THE ITALIAN INDUSTRIES

The Government has issued the Law Decree no. 23 dated 8 April 2020 (also called “liquidity decree”) introducing a package of financial measures to support the Italian economy during the emergency caused by the Covid-19 pandemic.

The national security fund for small and medium companies has been strengthened until Euro 100 billion. The Fund will increase the maximum secured amount for each company from Euro 2.5 million to Euro 5 million. In addition, the Fund’s securities will be expanded as follows: (i) they will be granted to companies having up to 499 employees; (ii) they will be compatible with refinancing transactions; (iii) companies under restructuring procedure or arrangement with creditors will be eligible to obtain a State-secured loan; (iv) no prior due diligence will be required for loans up to Euro 800 thousand that do not exceed the 25% of the applicant company’s revenues.

In parallel, a security worth up to 200 billion will be made available through the State-owned company SACE (the Italian export credit agency) with the aim to cover bank financings in favour of large companies with 500 employees or more (as well as of small-medium companies and freelancers up to Euro 30 billion).

The security will be granted subject to satisfaction of certain conditions by the borrower, namely: (i) maximum term of 6 years; (ii) maximum secured amount not exceeding the highest figure between the 25% of the applicant company’s revenues and the employment costs for 2019; (iii) commitment not to distribute dividends for 12 months after the financing drawdown; (iv) commitment to handle the employment levels through arrangements with the unions. SACE will secure bank financings that satisfy the mentioned conditions until the following limits: 90% for companies with less than 5.000 employees in Italy and a turnover not exceeding Euro 1.5 billion; 80% for companies with more than 5.000 employees in Italy and a turnover in a range between Euro 1.5 billion and 5 billion (on a consolidated basis); 70% for companies having a turnover higher than 5 billion (on a consolidated basis).

In order to protect public interests and the national

security, the Government has also extended the scope of application of the so called “Golden Power”, (i.e. the veto right in respect of M&A transactions involving national strategic sectors). On such basis the Government may prohibit foreign players to take control over Italian companies not only in the “traditional” sectors (such as the infrastructure and defense industries), but also in the finance, bank, insurance, energy, transport, health care, food safety, artificial intelligence, robotics and cybersecurity sectors.

SOCIAL SECURITY PROVISIONS TO PRESERVE EMPLOYMENT LEVELS

Pursuant to the Law Decree no. 18 of 17 March 2020, the suspension or reduction of work activities due to the Covid-19 emergency have been included among the reasons based on which employers can apply for the ordinary redundancy procedure (*cassa integrazione guadagni ordinaria*). The admission to such redundancy procedure requires that the employer must have previously paid the relevant financial contributions to the Italian Social Security Authority (INPS), that is calculated as a percentage of the overall salaries varying upon the industry sector and number of employees. According to the same Law Decree, those companies that are not eligible to apply for the ordinary redundancy procedure can obtain the same benefits by way of derogation (*cassa integrazione guadagni ordinaria in deroga*) if they finalize a prior arrangement with the unions to maintain the pre-crisis employment levels.

The redundancy scheme grants a salary integration up to (approx.) Euro 1.200 per month for each employee, and allows the companies to suspend or reduce work activities for a maximum term of 9 weeks.

In order to preserve the employment levels throughout the Covid-19 emergency, the Government has also prevented the activation of collective dismissals for a period of 60 days (and has suspended those commenced between 23 Feb. and 18 Mar. 2020), irrespective of the company size.

SUSPENSION OF COURT ACTIVITIES

With the aim to avoid crowds of people and so prevent the spread of the virus, the Law Decree no. 23 dated 8 April 2020 has resolved to suspend the hearings to be held before the Italian Courts (including civil, criminal, administrative and tax proceedings) from 9 March until 11 May 2020. Accordingly the hearings scheduled in that period have been deferred *ex officio* to a later date.

Likewise they have been suspended all court activities (e.g. filings, production of writs, enforcement measures) throughout the mentioned timeframe.