

## Newsalert

Patrimonio Rilancio: publication of the Decree in the Official Journal

In the Official Gazette No. 59 of 10 March 2021, the Decree of the Ministry of Economy and Finance ("**MEF**") No. 26 of 3 February 2021 (the "**Decree**") setting out the regulations for the operation of a new Italian Patrimonio Rilancio was published.

The Decree, which will enter into force on 25 March 2021, contains the implementing rules of Decree-Law No. 34 of 19 May 2020, converted into Law No. 77 of 17 July 2020 (the so-called "**Decreto Rilancio**"), which introduced - among other things - an aid scheme already approved by the European Commission under the *Temporary Framework on State Aid*<sup>1</sup>. The scheme provides for certain recapitalisation and financial support measures through resources to be administered by the segregated fund called "Patrimonio Rilancio" (the "**Patrimonio Rilancio**") to be established by Cassa Depositi e Prestiti S.p.A. (an Italian majority-State-owned company) ("**CDP**"), pursuant to the provisions of the Decreto Rilancio and which will operate on the basis of the provisions of the Decree.

Further instructions on the operation of Patrimonio Rilancio will be contained in the regulation which will be adopted by CDP, subject to approval by the MEF.

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<sup>1</sup> The European Commission has approved the Italian scheme to support large companies affected by the coronavirus pandemic on 17 September 2020. For more information, please refer to our Newsalert, published on the same date, available at: <https://www.chiomenti.net/public/files/0/Newsalert-European-Commission-approves-Italian-aid-measures-17092020.pdf>

In a nutshell, the Decree not only establishes general access criteria for companies wishing to benefit from the measures governed by the Decree (Article 3), but also provides for two different types of operation of Patrimonio Rilancio<sup>2</sup>:

- the first, defined under the terms and conditions of the *Temporary Framework on State Aid*.

In the context of these operations, Patrimonio Rilancio intervenes through (i) participation in capital increases, (ii) the subscription of bonds with conversion obligation, (iii) the subscription of convertible subordinated bonds and (iv) the subscription of subordinated bonds.

The operation of Patrimonio Rilancio under the European Union's *Temporary Framework on State Aid* is contained in Title II of the Decree, which, in addition to identifying the access requirements of companies in order to benefit from the interventions carried out under the *Temporary Framework* (Article 5), regulates, in particular, the types of interventions (Article 6), the size of capital increases, bonds with conversion obligation and convertible subordinated bonds (Article 7), the maximum size of subordinated bonds and the maximum cumulative quantitative requirements to be complied with (Article 8), the economic conditions for subscribing to capital increases (Article 9), the economic conditions for subscribing to bonds with conversion obligation (Article 10) and the economic conditions under which Patrimonio Rilancio may subscribe to convertible subordinated bonds (Article 11) and subordinated bonds (Article 12). The Decree also deals with the procedures for disinvesting the capital and the commitments that the company must make in order to benefit from the interventions of Patrimonio Rilancio;

- market-based operations, through (i) participation in capital increases on the primary market, (ii) subscription of convertible bonds on the primary market, (iii) transactions on the primary and secondary market reserved for so-called "strategic companies", and (iv) corporate restructuring transactions.

The discipline of the operation on market terms is contained in Title III of the Decree, which establishes, firstly, that the interventions of Patrimonio Rilancio on market terms are carried out according to the priorities defined, in relation to the sectors, sectors, and industrial policy objectives, in the National Reform Plan, in a specific chapter devoted to economic planning.

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<sup>2</sup> For a general overview of the provisions of the Decree, please refer to our Newsalert of 17 December 2020 available (in Italian only) at: <https://www.chiomenti.net/public/files/3555/Newsalert-iter-approvazione-Patrimonio-Destinato--151220.pdf>.

For further details on the different methods of intervention, please refer to our Newsalert: "Patrimonio Rilancio: purchase of bonds issued by Italian corporates" (<https://www.chiomenti.net/public/files/0/Newsalert--Patrimonio-Rilancio---Bonds-ENG.pdf>) and "Patrimonio Rilancio: participation in share capital increases by Italian corporates" (<https://www.chiomenti.net/public/files/3595/Newsalert--Patrimonio-Rilancio---Equity--ENG.pdf>), both published on 27 January 2021.

The Decree regulates in detail (i) the access requirements of companies in order to benefit from the interventions carried out by Patrimonio Rilancio under market conditions, (ii) the types and size of the interventions and (iii) the main economic conditions under which Patrimonio Rilancio can subscribe to capital increases under market conditions or convertible bonds under market conditions. In view of the temporary nature of the interventions of Patrimonio Rilancio, Articles 20 and 21 then provide, respectively, (i) contractual mechanisms to ensure disinvestment and guarantee adequate levels of valuation of the investment made and protection against risk and (ii) powers of Patrimonio Rilancio over the *governance* of the companies in which it intervenes in a market regime.

The final articles of Title III are reserved for the interventions of Patrimonio Rilancio in the form of operations on the primary and secondary markets in favour of strategic companies, through direct and indirect channels - the latter through UCITS managed by Italian asset management companies controlled by CDP - and for interventions relating to the restructuring of companies which, despite temporary asset or financial imbalances, are characterised by adequate profitability prospects (the so-called "turnaround" interventions, referred to in Article 24).

Turnaround operations may be carried out by Patrimonio Rilancio either directly or indirectly, *i.e.* through the subscription, by Patrimonio Rilancio, of units or shares of alternative UCITS, including credit UCITS, managed by Italian asset management companies or by European asset managers.

Title IV sets out the principles of the preliminary investigation to be carried out by or on behalf of Patrimonio Rilancio, while Title V addresses the regulation of Patrimonio Rilancio, which will be adopted by the board of directors of CDP, subject to approval by the MEF.

Lastly, Title VII regulates the State's guarantee of last resort in the event of non-availability of Patrimonio Rilancio.

*For further information, please contact your usual contacts at Chiomenti.*