

Italy

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## Italy

### Italian Measures Against Business Relocation and Misuse of State Aid

In the business context, 'relocation' means the closing or scaling down of a firm's activities in the home market, following the shifting of all or parts of the production chain in a different geographic area. This may occur within the same EU Country or in a different EU Member State (Internal Relocation), or outside the EU (External Relocation).<sup>1</sup>

Relocation can have a positive effect in creating employment in certain sectors, but also adverse effects when an economic activity is removed from a region that does not have any viable alternatives. Decisions on where a business relocates can be influenced by the EU Cohesion Policy and State aid measures issued by Member States to attract investments in poorer regions.<sup>2</sup>

In the past the EU Parliament asked the Commission to keep company closures and relocations under proper review, demanding the aid granted to be paid back if it is misused. Moreover, it proposed a series of actions designed to limit the negative effects of relocations, both inside and outside the EU, and to prevent fiscal and social dumping. With this aim, the Parliament encouraged the adoption of specific measures in sectors particularly vulnerable to this phenomenon, distinguishing between relocations within the EU and those beyond its frontiers.<sup>3</sup>

By the so-called Dignity Decree No 87/2018, as amended by Law No 96/2018,<sup>4</sup> Italy introduced specific measures to fight against the misuse of State aid deriving from both Internal and External Reloca-

tions. The Italian measures refer to State aid to productive investments, employment and acquisition of instrumental assets as specified below.

#### I. Aid to Productive Investments<sup>5</sup>

According to the Dignity Decree, Italian and foreign companies operating in the national territory, which received State aid conditional upon the fulfilment of productive investments, lose such benefit if the business activity concerned is entirely or partly delocalized outside the European Economic Area (EEA), within five years from the date of completion of the supported investments.

According to such provision, the recipient is therefore under the obligation to maintain in the EEA for five consecutive years the business activities that have benefited from public support to productive investments.

The five-year period applied by the Italian Dignity Decree seems to comply with the same time limit provided for the durability of operations pursuant to the legal framework governing the European Structural and Investment Funds.<sup>6</sup> The latter states that any operation comprising investment in infrastructure or productive investment shall repay the contribution if, within five years of the final payment to the beneficiary, it is subject, *inter alia*, to a cessation or relocation of a productive activity outside the programme area.

According to the Dignity Decree, if a relocation occurs outside the EEA in the five-year period, the competent national authority may impose to the beneficiary a pecuniary administrative sanction equal to two to four

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1 European Parliament, DG Internal Policies of the Union, Policy Department Economic and Scientific Policy, *Relocation of EU Industry. An Overview of the Literature, background note IP/A/ITRE/NT/2006-14*, PE 382.166, 2006, in <<http://www.europarl.europa.eu/document/activities/cont/201109/20110906ATT26029/20110906ATT26029EN.pdf>> visited on 23 May 2019.

2 C Needham, *Business relocation in the EU*, 10 April 2013 in <[https://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130501/LDM\\_BRI\(2013\)130501\\_REV1\\_EN.pdf](https://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130501/LDM_BRI(2013)130501_REV1_EN.pdf)> visited on 23 May 2019.

3 European Parliament, *Strengthening European competitiveness - the effects of industrial change on policy and the role of SMEs*, 2004/2154(INI) in OJ C 124E of 25 May 2006, 416–575, <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:124E:0510:0516:EN:PDF>> visited on 23 May 2019.

4 Law Decree No 87 of 12 July 2018, *Disposizioni urgenti per la dignità dei lavoratori e delle imprese* applicable as of 14 July 2018, converted with amendments by Law No 96 of 9 August 2018 (in GURI No 186 of 11 August 2018).

5 Dignity Decree, Article 5.

6 Regulation (EU) 1303/2013 of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006, in OJ L 347, 20.12.2013, 320–469. The Regulation extends the time limit for repayment to 10 years if the beneficiary productive activity is subject to relocation outside the EU.

times the amount of the aid received.

The Dignity Decree takes into account also State aid measures specifically conditional upon the fulfilment of productive investments in a certain national area. In this respect, the Dignity Decree states that Italian and foreign beneficiaries lose the benefit if the economic activity concerned is delocalized from the incentivized site to another area in Italy as well as in other EEA Countries, within five years from the date of completion of the subsidized investment.

The amounts of the administrative sanctions levied shall be allocated to a national fund for the financing of development plans, to the benefit of the production sites affected by relocation.

## II. Employment Aid<sup>7</sup>

National authorities may revoke the benefit to any Italian or foreign beneficiary of employment aid operating in the national territory, which reduces, without any objective reason, by more than 50% the employment levels in the subsidized site within five years follow-

ing the date of completion of the investment. If the reduction of the employment levels exceeds 10%, the benefit is reduced in proportion to the workforce cuts.

## III. Hyper-amortization of Instrumental Material Assets<sup>8</sup>

Article 1, paragraph 9 of Law No 232/2016<sup>9</sup> provides for the hyper-amortization of 150% of the costs for investments in new instrumental material assets aimed to technological and digital transformation according to the Industry 4.0 model.<sup>10</sup>

The Dignity Decree specifies that such benefit is eligible for assets allocated to production facilities within the Italian territory. The benefit shall be recovered if, during the hyper-amortization pe-

riod, the subsidized assets are transferred for a consideration or moved to production facilities located abroad, even if within the same company. In such cases, the aid is recovered by means of an increase in the taxable income of the fiscal period in which the sale or the relocation occurred, for an amount equal to the increases of the total depreciation rates deducted in previous fiscal periods, without application of penalties and interest.

The recovery does not apply if the subsidized asset transferred is duly replaced or, by its very nature, it is intended for use in more than one production site, being in such a case allowed its temporary use outside the national territory.

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<sup>7</sup> Dignity Decree, art 6.

<sup>8</sup> *ibid* art 7.

<sup>9</sup> Law No 232 of 11 December 2016, *Bilancio di previsione dello Stato per l'anno finanziario 2017 e bilancio pluriennale per il triennio 2017-2019*, in GURI No. 297 of 21 December 2016, S.O. No. 57.

<sup>10</sup> In this respect see Italian Government, *incentivi.gov.it – Reasoned Vademecum of Development Incentives*, available in <[https://www.mise.gov.it/images/stories/documenti/WEB\\_INCENTIVI\\_ENG.pdf](https://www.mise.gov.it/images/stories/documenti/WEB_INCENTIVI_ENG.pdf)> visited on 23 May 2019.

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## Lithuania

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### Recent State Aid Decisions in the Energy Sector

#### I. Introduction

Due to the geopolitical situation, geographical location and market structure of Lithuania supply of energy security is the major priority of its energy policy. Till

2013-2015 Lithuania entirely depended on Russian natural gas imports and was an energy island having no electricity grid connec-

tion with the rest of the EU. That explains the aims of diversification of energy mix and increase of production from local sources being at the core of the newly adopted National Energy Strategy of 2018.

Recent State aid decisions illustrate how Lithuania facilitates its national energy policy objectives. Support scheme to liquefied natur-

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