

Recent Developments in the Italian Gaming Legal Framework

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IN THE RECENT MONTHS some events and legislative activities have occurred, introducing important new rules and soon-to-come modifications in the Italian gaming legal framework. The following paragraphs analyze and point out what has changed, and will change, in this sector.

THE NEW RULES INTRODUCED BY THE ITALIAN "FINANCIAL LAW FOR THE YEAR 2003"

The "Financial Law" is a particular legislative act, adopted by means of a specific legislative procedure, according to which every year the Houses (Chamber of Deputies and Senate) approve a set of rules aimed at realizing financial effects starting from the first year successive to the one in which the Financial Law is adopted.

The last Financial law for the year 2003 introduced interesting provisions aimed at fighting illicit uses of entertainment equipment and devices and at providing new rules for sports wagering and horse race wagering.¹

The law provides that the production, importation, and management of entertainment equipment and devices are subject to prior authorization given by the Minister of Economy (through the State Monopolies). On the basis of

the authorizations released, the Minister of Economy must set up and manage a national electronic databank containing all the information about production, distribution, importation, and release of entertainment equipment and devices for legal gaming. It must be noted that this electronic databank must be replaced in December 2003 by a telematic network accessible via the Internet.

To obtain the ministerial authorization, the following requirements must be met:

- (a) Producers, distributors, and importers of entertainment equipment and devices must self-certify that the equipment is in compliance with the technical rules, and contains specific apparatus guaranteeing the unalterability of its technical characteristics, method of operation, and pay out functions;
- (b) Producers, distributors, and importers of entertainment equipment and devices must self-certify that the equipment is provided with technical measures for blocking its ordinary operation if a violation or alteration is attempted. If any alteration is attempted, the equipment must indicate the violation on the video screen; and
- (c) Specific technical instructions must be placed on entertainment equipment and devices explaining their technical characteristics, operation, the disbursement of gambling wins, and the security apparatus.

An important modification was made to the Public Security Law which is one of the main

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¹See Law of December 27, 2002 No. 289, Article 22 (link in Italian) (http://www.camera.it/chiosco_parlamento.asp?content=/parlam/leggi/home.htm).

laws regulating gaming activities. The new text of article 110 now provides that:

- (a) In all gaming or billiard rooms or in other places (including private clubs) authorized to carry out or provide gaming services, a specific notice must be posted containing a list of prohibited games of chance and other games whose prohibition the Public Authority deems necessary. The prohibition against collecting bets must be clearly stated in the notice;
- (b) Installing or using automatic, semi-automatic, or electronic devices for games of chance (intended as equipment having in-born the bet or that allows monetary gaming wins of a pure aleatory nature) in public places, in places opened to public or in private clubs or associations of whatever nature is prohibited;
- (c) Legal automatic, semi-automatic, or electronic devices for entertainment or ability games must be intended as: 1) apparatus having the ability or entertainment elements as predominant with respect to the aleatory element; 2) allowing each game to last not less than 10 seconds; 3) being based on a fee for each game not higher than Eurocent 0,50; 4) not reproducing, in whole or in part, either the poker game or its fundamental gaming rules; 5) calculating monetary gambling wins in a non predetermined way, but on the basis of a comprehensive set of games of about 7.000 and with an amount not less than 90% of the sums betted; 6) delivering gambling wins only by means of coins;
- (d) legal automatic, semi-automatic, or electronic devices for entertainment or ability games must also be intended as: 1) electro-mechanical devices without screens (working if a coin is introduced) by means of which the player expresses his physical, mental or strategic ability; the total economic value of each game's fee must be not higher than Euro 1 and the prizes must be delivered immediately after the conclusion of each game in the form of small objects not convertible to money whose value can not be higher than 20 times the value of each game's fee; 2) devices working if a coin

is introduced (valued not higher than Eurocent 0,50 for each game) in which ability elements are predominant with respect to aleatory elements and allowing the prosecution or the repeating of a game, when concluded, for no more than 10 times; 3) devices based solely on physical, mental, or strategic ability, not giving prizes for the game (but only the possibility to prolong the game itself, according to the player's ability) and whose fee is not higher than Eurocent 0,50 for each game.

It has to be noted that any infringement of the above mentioned rules regarding equipment and devices is sanctioned with a penalty of Euro 4.000 to Euro 40.000 and with the seizure of the equipment. If the crime is committed by a subject holding a license, it will be suspended (from one to six months) or revoked in cases of recidivism.

MANAGEMENT OF SPORTS WAGERING IN ITALY: THE EU COMMISSION'S OBJECTIONS AND THE "GAMBELLI CASE"

On October 17, 2002 the EU Commission formally asked Italy to respect the EU competition laws in the assignment of concessions for sports wagering management. Actually, stock capital companies listed in regulated EU markets are excluded from the possibility of obtaining such concessions in Italy according to criteria deemed not necessary by the EU Commission in order to fight fraud and illicit activities. Further, Italy recently renewed, through January 1, 2006, about 329 concessions for the management of horse race wagering without respecting bids procedures and competition criteria. Consequently, the EU Commission contested the violation of the general transparency principle set forth in the EU Treaties and noted that:

- a) when important public concessions are assigned without letting interested European competitors participate in proper bidding, European companies are wrongfully robbed of their right to make an offer for subscription; and

b) public authorities assigning concessions and even wagerers could possibly receive lower quality service compared to better service which could have been offered by an unlawfully excluded provider.

The EU Commission has requested Italy (by means of a justified opinion) to comply, within two months, with the relevant EU provisions in this sector before seeking recourse in the European Court of Justice due to the breach of the EU rules providing free movement of services and freedom of establishment.

The Italian Government has still not responded to the EU Commission's complaint.

Another important case which will probably lead the Italian government and Parliament to introduce new rules for sports wagering, compliant with the EU requests, is the so called "Gambelli case." This case concerns a criminal proceeding under way before the Criminal Court of Ascoli Piceno against Mr. Piergiorgio Gambelli who, with 100 other persons, managed data transmission centers in Italy connected via Internet with an English bookmaker who, by means of these connections, collected sports wagers in Italy. Because this activity is only permitted by the state or licensed subjects, Mr. Gambelli was reported to the criminal court. His lawyers, however, have requested that the judge suspend the case and submit it to the European Court of Justice in order to verify whether the Italian rules regarding the collection of sports wagers are at odds with the EU principles granting freedoms of establishment and of providing services.

On March 13, 2003 the General Advocate of the EU Court, Mr. Siegbert Alber, presented his conclusions on the case stating that: "the Italian rules preventing other providers located in EU Member States from collecting and managing sports wagering in Italy must be considered as a breach of the fundamental EU freedom of providing services." Further, it has been pointed out that: "the related Italian legal framework can not be justified according to mandatory needs which allow to obstacle the cross-border management of sports wagering." In fact, the General Advocate stated that the national rules on sports wagering of the state from which the service is

provided (in this case Great Britain) must be deemed as a sufficient guarantee related to the honesty of the organizer of the sports wagers collecting service.

Finally, the General Advocate pointed out that neither the aim of limiting and controlling the citizens' passion for wagering nor the aim of avoiding possible negative financial consequences related to certain national budgets can be considered as proper justifications to restrain and limit the free provision of such services.

It has to be noted that even if the General Advocate's conclusion is not binding the European judges, these conclusions are rarely disregarded. The final decision on the "Gambelli case" (No. C-243) is expected in May 2003. Should the European Court condemn Italy, the consequences will be very important, opening the way for needed legislative modifications of the Italian legal framework aimed at introducing rules compliant with the EU principles and permitting real competition in the Italian market of sports wagering services.

THE RECENT PROJECT FOR RESTYLING THE ITALIAN GAMING AND BETTING MARKET

Other recent and interesting developments in the Italian gaming and betting market concern the thorough restyling of the national system related to "sports contests" and "sports wagering." The project was presented in April by the Ministry of Economy and by the national Autonomous Enterprise for State Monopolies.

The new project is related to the so called "Totocalcio" game (a sport contest requiring the player to bet on pools by filling in a coupon to indicate the results of 13 soccer matches of the Italian Leagues; the money prize is won if at least 12 results are guessed correctly). The "Totocalcio" will be completely changed in September 2003. The "New Totocalcio" project (for which a financial investment of Euros 25 mln has been carried out) aims at relaunching one of the best sport contests worldwide, resolving the problems related to the continuous decrease of incomes (20% less between January 2002 and January 2003).

Before the presentation of the final project,

the hypothesis related to the "New Totocalcio" includes the following:

- a) a coupon listing 12 or 14 soccer matches whose results have to be guessed correctly;
- b) the prevision of a "special prediction" additional to the traditional 13;
- c) a modular coupon (for example with 9 results to be guessed correctly);
- d) prizes for players who score "0" points, not guessing even one result; and
- e) prevision of consolation prizes.

Similar changes are provided for another sport contest called "Totogol," which requires the player to guess the exact score of 8 soccer matches of the Italian Leagues by filling in a coupon; the money prize is won if at least 6 scores are guessed correctly).

With regard to the distribution network and the authorized centers where it is possible to bet on "Totocalcio," "Totogol," and other sports contests, the project provides an increase in the current number of centers from 18,000 to 25,000. To be authorized, the interested center (usually a bar, tobacconist, or specific center for the collection of bets and wagers) must pay a fee *una tantum* and must comply with specific requirements. Further, the whole national bet collection system will be completely converted to a real time and online system by means of a telematic national center called "Unique National Totalizer" managed by the State Monopolies, while every collection center will have its own Internet portal.

Finally, in January 2004 new contests will be introduced and the market will be opened to foreign providers. In any case the final and detailed project released by the Minister of Economy and by the State Monopolies is expected in May 2003. More information can be found on the State Monopolies web site (in Italian, see <http://www.aams.it>).

THE NEW MINISTERIAL DECREE PROVIDING TECHNICAL RULES FOR ENTERTAINMENT EQUIPMENT AND DEVICES

With the Ministerial Decree enacted on April 10, 2003 by the Minister of Economy (published

in the Italian Official Journal on April 30, 2003, No. 99, see: <http://www.filodiritto.com/notizieaggiornamenti/30aprile2003/minfinanzedecretoapparecchidivertimento.htm>) new technical rules have been introduced with regard to entertainment equipment and devices. The legal references on the matter were already contained in the Public Security Law (article 110, paragraph 6), in the Financial Law for the year 2000 (Law No. 388/2000, article 38), in the above mentioned Financial Law for the year 2003 (Law No. 289/2002, article 22), and in the Law No. 27/2003 containing fiscal measures (and providing, among other things, the prohibition against the installation of videopoker and slot machines in Bingo houses).

Among other things, entertainment equipment and devices must comply with the following requirements:

- (a) the duration of each game must not be less than 10 seconds;
- (b) the fee for each game must be not higher than Eurocent 0,50;
- (c) entertainment equipment and devices must be based on gaming methods that rely on ability and entertainment characteristics that are predominant with respect to the aleatory element;
- (d) entertainment equipment and devices must not be allowed to reproduce, in whole or in part, either the poker game or its fundamental gaming rules;
- (e) entertainment equipment and devices must calculate gambling wins in a non predetermined way, but on the basis of a comprehensive set of games of about 7.000 and in an amount not less than 90% of the sums betted;
- (f) entertainment equipment and devices must deliver gambling wins only by means of coins;
- (g) each gambling win must be paid out immediately after the end of each winning game and the amount cannot be higher than 20 times the single fee for each game;
- (h) entertainment equipment and devices must have specific apparatus guaranteeing the unalterability of their technical characteristics, operational functions, and methods of paying out gambling wins.

The recent Ministerial Decree is interesting also because it introduces clear definitions of the main concepts. For example, “entertainment” means “the whole of modalities and gaming sequences involving the player during a game”; while “equipment or device” means “a whole of components for gaming aims intended, including—amongst others—apparatus for coins’ insertion and disbursement, gaming cards and connection devices for communications.”

A “manager of entertainment equipments [sic] and devices” is “a person who carries out an organized activity aimed at distributing, installing, economically managing entertainment or gaming equipment and devices (automatic, semi-automatic or electronic) in commercial business places, authorised associations, clubs.”

RECENT DEVELOPMENT IN THE ITALIAN GAMING LEGAL FRAMEWORK: LICENSING AND ADMINISTRATIVE OUTLINES

D.P.R. no 430 of October 26, 2001 became effective on April 16, 2002, implementing the regulation under art. 19, comma 4 of law no.449 of December 27, 1997. As a result, the entire regime regarding contests, prize draws, and local fundraisers, which was previously covered by R.D.L. no.1933 of October 19, 1938, has been revamped.

Above all, D.P.R. no 430/2001 distinguishes between fundraisers for prizes and local fundraisers, providing for each a system of permits under previous legislation and on the other hand, introducing transparent notification fees that are sufficient to legitimize the activities performed.

Sweepstakes for prizes are regulated under article 1–12 of D.P.R. no. 430/2001 and include competitions and prize contests of any kind that involve the offering of prizes directly to the public within the national territory, designed to increase awareness of products, services, firms, logos or brands or to sell specific products or to offer services and for *any commercial purpose*.

For this kind of contest, promoters must provide prior notice to the Ministry of the product

activity by completing and submitting the appropriate forms and documentation confirming payment of a deposit.

D.P.R. no. 430 also provides certain requirements and conditions related to both the gaming activities themselves as well as those of promoters, with regard to businesses that are not resident in the national territory, by means of a representative resident in the territory of the state, appointed with the effect in article 17 of the President of the Republic’s Decree of October 26, 1972, no.633.

In practice, the regulatory provisions in this area apply only to fundraisers for prizes for the purpose of promoting goods or services, and are therefore of a lucrative nature.

Fundraisers whereby prizes are awarded to public entities or institutions that have social or charitable causes as their primary purpose are expressly excluded from the application of this rule, as they are not considered competitions and prize contests according to Article 6(e).

Thus, charitable sweepstakes for prizes are not required to notify the Ministry of product activities and there is no notification fee for entities that pursue social or charitable ends, including those of an administrative nature where performance of the gaming activity must be authorized.

Conversely, Articles 13 and 14 of D.P.R. no. 430/2001 regulate local fundraisers for charity, including lotteries, bingo, prize draws, and charity booths. The administrative provisions for admissibility and the conditions of performance of these games appear strict and restrictive. Above all, the law imposes both subjective and objective obligations.

Article 13 provides:

1. It is forbidden to engage in any kind of lottery, bingo, raffle, prize draw, or charity booth, as well as any other event of similar nature. However, the following kinds of national lotteries are permitted:
 - a) lotteries, bingo, prize draws and charity booths, provided by charitable entities, and Non-profit associations and committees for the promotion of cultural, recreational and sportive goals and for

Non-profit organisations for social welfare as mentioned under article 10 of legislative decree of December 4, 1997, no. 460, if such fundraisers are necessary for the financial support of these organisations;

2. For the purpose of paragraph 1, sub a):
 - a) “**lottery**” means fundraiser of the kind performed by the sale of tickets drawn from a pool, equivalent to one or more prizes according to the order of tickets withdrawn. Lotteries are permissible if the sale of tickets is limited to the territory of the province, and the total amount of the tickets that can be issued, however they are divided by the price of the tickets, does not exceed 100.000.000 lire, equivalent to 51.645, 69 Euro and the tickets are marked by a serial number and progressively numbered;
 - b) “**bingo**” means a fundraiser of the kind effected by the use of a board with a specified amount of numbers, from number 1 to 90, with prizes awarded to bingo cards that have been completed with the correct combination of numbers drawn from a pool. Bingo games are permitted as long as the sale of the cards is restricted to the commune in which the bingo game is to take place and if the cards are marked by a serial number and progressively numbered. The number of cards that may be issued for each bingo game is unlimited, however, the total value of the prizes offered must not exceed the amount of 25.000.000, equivalent to 12.911,42 Euro;
 - c) “**prize draw**” or “charity booth” means a fundraiser by the sale of tickets, which are organised in a way that tickets are not drawn from a pool but rather, a part of the ticket price is added to the prize in the draw. Prize draws and charity booths are permitted as long as the sale of the tickets is restricted to the territory of the commune or if the fundraiser is effected and the amount obtained by the sale of the tickets does not exceed the amount of 100.000.000, equivalent to 51.645,69 Euro.
3. The sale of tickets and cards for Gambling

roulette wheels or other similar games are prohibited. The prizes of the fundraisers provided under paragraph 2, sub a) and c) only include services and movable property, they do not include money, public or private rights, bank credits, credit cards and precious metals.

Article 14, D. P.R. no 430/2001 provides:

1. Legal representatives of fundraising organisational entities must notify the appropriate prefect and mayor of the commune in which the draw is to take place with at least 30 days prior notice. Any variations on the modes of performance of the fundraiser must be notified to these entities with sufficient time for administrative review.
2. Upon notification under paragraph 1, the following documentation must be included:
 - a) for lotteries, a statement indicated the quantity and nature of the prizes, the quantity and the price of tickets to be sold, the place where the prizes will be displayed, the place and time of the draw and the award of prizes to the winners;
 - b) for bingo games:
 - 1) a statement specifying the prizes and indicating the price of each of the cards;
 - 2) documentation confirming payment of a deposit for an amount equivalent to the total value of the offered prizes, determined on the basis of their price of purchase or, if undetermined, the average market value of the prizes.
 - 3) For prize draws and fundraiser booths, the organising entity must indicate in the notification under paragraph 1, the number of tickets intended for issue and their respective price.
 - 4) The Prefect prohibits fundraisers in the absence of:
 - a) Fulfilment of the conditions provided under this regulation; and
 - b) the need to rely on fundraising to financially sustain the promoter entity.