

Online Gambling and Sports Wagering in Italy by Means of Websites

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CASINO GAMES AND SPORTS WAGERING LEGAL FRAMEWORK IN ITALY: A GENERAL OVERVIEW

ITALIAN LAW MAKES A DISTINCTION between casino games and sports wagering.

In Italy, gambling is allowed only in expressly authorized casinos. At present, authorized casinos are located in only four Italian cities.

Italian criminal laws prohibit casino games regardless of how they are carried out or organized. Games like poker, slot-machines, and roulette have been deemed illegal under Italian law.

On the other hand, sports wagering is legal on the condition that the person who organizes the bets is licensed by the Ministry of Economy (Department of Finance). The Law of December 23, 2000, n. 388 (amending the Law of December 13, 1989, no. 401) has provided criminal sanctions against those who take up bets without a public license.

With specific regard to sports wagering, it is

necessary to distinguish between wagering activities related to sports events organized or controlled by the Italian National Olympic Committee (CONI) and UNIRE, the entity which controls horses racing wagering, and other wagering activities which are potentially allowed (but in different fields, betting games or casino games are always forbidden).

Regarding wagering activities related to sports events organized or controlled by CONI or UNIRE, Italian law provides that only authorized subjects can be qualified by means of proper licenses. The licenses are usually assigned by means of public tenders. These tenders have been already carried out by CONI, which has qualified a certain number of licensees until December 31, 2005 (once this term expires, the licenses can be renewed for another six years). UNIRE's public tenders are currently still not organized, but it must be pointed out that current Italian law permits this organization to qualify only subjects who were previously appointed as licensees.

Nevertheless, according to very recent news, some foreign operators have addressed a complaint to the EU Commission denouncing the limited Italian system (and regulatory framework) of license assignment in this field which could be considered a violation of the EU rules regarding competition and the freedom of establishing new activities within the EU.

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ONLINE GAMBLING: ITALIAN CRIMINAL LAW

The following comments are based on two developments, the first from case law and the second coming from the legislature.

The Italian Court of Cassation issued an important ruling on Internet regulation with Sentence of November 17th–December 27th 2000, No. 4741, stating that crimes deriving from defamation on the Internet are actionable under Italian law pursuant to Article 6 of the Italian Criminal Code, even if the conduct has been initiated outside of Italy, provided that the conduct took place wholly or partly in Italy and/or the event occurred in Italy (so called "ubiquity theory").

Following the above captioned principle, and given that gambling activity is forbidden in Italy unless specifically authorized by law, it is possible to infer that the organization of betting games or casino games by means of a website, even if located on servers abroad (but which can be browsed also from Italy), may be considered an illegal activity in Italy because the conduct is partly undertaken in Italy.

Moreover, pursuant to Italian criminal law, gambling crimes are "pure conduct" offenses: if the crime has been committed once, an activity which makes the illegal game available to players has been realized.

The second development comes from the Law of December 23, 2000, No. 388 (the so called "Financial Law"), Article 37, which, for fiscal reasons, restricted the regulation of betting and of automatic, semiautomatic and electronic machines which allow bets for prizes, in cash or in kind.

According to the new legislation, betting games are games that, notwithstanding their specific features, offer prizes which are valued in excess of the legal limitations. Games are considered legal provided that: the player can express his physical, mental, and/or strategic aptitude; the game can be activated through a token and/or a coin whose value is not greater than one Euro; and if it awards prizes, the prizes awarded are not valued at more than ten times the value of the token/coin used to activate the game.

Thus, a legal standard has been established to ascertain whether a game is illegal and, if exercised in a public or open to public place, criminally relevant. Sanctions provided by criminal law¹ include imprisonment (*arresto*) from three months to one year and a fee (*ammenda*) not less than Euro 256,08 (US\$200), and sanctions pur-

suant to the public security law² include a fine (*ammenda*) of Euro 516,46 (US\$500) to Euro 5,164,57 (US\$5,000). These penalties can be assigned concurrently and can be doubled under certain circumstances.

It could be stated that the Internet is not a public³ or open to public place⁴ to avoid the imposition of criminal sanctions.

Although there is no case law on this point, it is quite reasonable to infer that the Internet is a (virtual) public or open to public place. Moreover, gambling crimes through the Internet could be considered to be an illegal use of machines for betting games. Such an interpretation of the current regulation is also valid in criminal law, because it could be considered an extensive interpretation, different from analogy which is prohibited in criminal law.

Extensive interpretation is valid whenever it is necessary to rule on a case which could not be foreseen by the legislature.⁵

The fact that the Italian Parliament is discussing bills concerning new regulation of gambling crimes through the Internet does not prevent a judge from imposing criminal sanctions on the basis of the legislation actually in force against the legal representative of a company that commits gambling crimes, even if the conduct takes place only partly in Italy, or practices betting games in a public or open to public place.

ARTICLE 1933 OF THE ITALIAN CIVIL CODE

An additional element of potential risk in organizing online betting games is represented by the provisions of Article 1933 of the Italian civil code.

¹ See Article 718 of the Italian criminal code.

² See Article 110 of the Italian public security law.

³ A public place is any road or any other place accessible to anybody.

⁴ An open to public place is a cinema, theatre, stadium, or any other place where access is allowed to a certain category of people, or under certain circumstances and/or limits.

⁵ According to the commentators, extensive interpretation is valid when it is necessary to discipline new situations which may arise as a consequence of technological progress.

Article 1933 states that, in any case of betting games or gambling not licensed by the law, the losing bettor who has not already fulfilled his or her obligation has the legal right to refuse the payment of the bet and the winner is not entitled to enforce his or her right for the payment. However, if the bettor has already spontaneously paid the bet without fraud, he cannot make a claim for the refund.

The principle of this rule is based upon the fact that the obligation of payment of a bet is not a legal obligation protected by the law but is only a moral obligation and the bettor is free to comply—or not—with the obligation.

In online casino games in general, players must make a deposit before starting the game and payment of the deposit can be done through a credit card, Western Union, or a wire transfer. With Western Union or a wire transfer, the deposit will be activated only when the remittances have been received by the bank of the website organizer. In cases where payment is made with a credit card, the bankroll will be credited after two or three minutes.

We deem it relevant to underline that authorization given by the player cannot be considered as a payment, because the material payment will only be provided to the individual who organizes an online casino game by the credit card company at the scheduled deadline. In this case, there might be a risk that the player, after having lost all of his or her deposit paid with a credit card, will order the credit card company to refuse the payment because the organizer of the game does not have any legal right to request the deposit pursuant to Article 1933 of the Italian Civil Code. We cannot predict if the credit card company will prudently comply with the client's order and deny payment, but this potential risk must be considered.

RECENT DEVELOPMENTS REGARDING TELEPHONE OR ONLINE PLACING OF BETS, GAMES, AND PRIZE CONTESTS

The Ministerial Decree of February 15, 2001, No. 156,⁶ must be analyzed as an additional and important set of rules within the Italian legal framework on online gambling.

This recent Ministerial Decree will allow new kinds of games, other than horse races, bets, and wagering linked to sports events organized by the Italian National Olympic Committee, which can be carried out by means of a telephone or via the Internet.

The specific games object of the Ministerial Decree will be established by means of a successive act, and the specific procedures related to the acquisition, recording, and documentation of telephonic or telematic bets will be set up as well. In the Decree, the Ministry of Finance sets forth two main requirements as essential conditions for compliance in order to obtain the requisite ministerial authorization (given to service centers and to telecommunications operators):

1. service centers and telecommunications operators shall use only ordinary telephone lines or networks; and
2. these subjects shall put their automated systems at the disposal of any operators interested in the new modalities of games' gathering.⁷

Further, the Decree confirms as essential the respect of specific principles to guarantee:

1. certainty and transparency of the relationships between the concessionaire and the bettor;
2. security and transparency of the telephone or online games;
3. users' good faith;
4. proper computerized methods for the safeguard of the above mentioned principles; and
5. proper systems for statements of account.⁸

With specific regard to future legislation, it should be noted that on January 31, 2002, bill

⁶ The Ministerial Decree of February 15, 2001, No. 156, *Regulation containing provisions related to the telephonic or on-line gathering of bets, games and prize contests* was enacted by the Ministry of Finance and published in the Italian official Journal of May 5, 2001, No. 100, in force since May 17, 2001.

⁷ See *id.*

⁸ See *id.*

No. 830, "Developments of bets by means of telematic tools" was introduced before the Italian Parliament. This bill aims to introduce new rules in order to solve the following current juridical problems in Italy:

- Article 37, paragraph 5 of Ministerial Decree (which—among others—has declared illegal the activities of gathering and booking bets and games carried out via telephonic or telematic tools by unauthorized Internet points and data transmission centers), has been transmitted to the Italian Constitutional Court and to the EU Court of Justice so that these entities can evaluate the compliance of this article with Italian constitutional principles and European principles about this matter.
- The EU Commission has set up an infringement procedure against Italy regarding "the modalities of assignment in Italy of the management of services related to horses races and sports wagering."
- Several decisions have been enacted by the merits jurisprudence which, not following the prohibition principles set forth by the Italian Court of Cassation, have acquitted unauthorized Internet points and data transmission centers gathering bets.
- The new rules contained in the Ministerial Decree are still far from being put into effect.

The new bill therefore aims to:

- 1) guarantee new revenues for the State;
- 2) liberalize the whole gaming and wagering sector;
- 3) make to come out completely clandestine and illegal bets and games;
- 4) monitor the whole phenomenon of gaming and wagering in order to set up successive and more specific legislative rules;
- 5) develop employment;
- 6) solve the judiciary contentious procedures before the Italian Constitutional Court and before the EU Court of Justice;

- 7) completely comply with EU principles;
- 8) introduce real protection for consumers; and
- 9) avoid and fight fraud and money laundering.

Bill No. 830 (the parliamentary debates have still not started) aims to reintroduce the *status quo ante*, re-establishing the situation before the enactment of Law 388/2000 by expressly declaring legal the gaming and wagering activities carried out by data transmission centers and Internet points. Such entities should be authorized by the Ministry of Economy and Finance to set up businesses in places where they will also be allowed to participate in bets and games by means of telematic tools and procedures proposed by Italian or European organizers.

ONLINE ADVERTISING OF INTERNET GAMING UNDER ITALIAN LAWS

Finally, with regard to the legal consequences of the development of Internet gaming in Italy, it is useful to note the following points related to the Italian rules in the field of Information Technology.

The communication eventually sent by the organizer of Internet gaming to the Italian users (aimed to give commercial or advertising information about websites where those activities can be carried out) by means of fax, e-mail, telephone or other automatic means are subject to the provisions contained in Article 10 of the Italian Legislative Decree No. 185/1999, "Protection of consumer with regard to the online contracts". According to this rule, the sending of such communications by a supplier of goods or services (also on the Web) is forbidden if the Italian user or addressee has not communicated in advance his consent to this transmission. Breach of this provision (so-called "spamming") could be sanctioned with a penalty equivalent to US\$5,000. The penalty is doubled if the prohibited conduct is repeated.

**CONCLUSIONS: THE GENERAL
CLIMATE IN ITALY REGARDING
INTERNET GAMING**

It can generally be said that there is strict surveillance of sports wagering, mostly for fiscal reasons. A portion of the receipts (such as the lotto's receipts, etc.) are public revenues.

However, online casino games are in fact played through different websites, mostly provided by foreign organizations located in coun-

tries where such games are not prohibited. This situation demonstrates a legislative uncertainty as to how to repress such activities and can be explained considering a general criminal policy which is not interested in the punishment of activities located in countries from which it would be very difficult to obtain international collaboration. Moreover, online casino games are mostly provided by individuals in private places, and therefore at the moment there is not a social danger to justify a more repressive and incisive criminal policy.