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Agency Services for On-line Participation in Lottery Games: Feasibility Perspectives According to the Italian Legal Framework

Alessandro del Ninno

THIS ARTICLE SHALL evaluate the compliance with the Italian gaming laws of a potential service (“*Service*”) which would enable participation by people (“*Participant*”) from abroad in the Italian official lottery games.

The Service may be imagined as provided through the Internet (based on an Italian website) and involving different activities, such as:

- receipt from the Participant of an order detailing the lottery game in which the Participant is interested in participating, including the draw date, the number of proposed draws, and the bet details for participating in any draw;
- purchase of the ordered lottery form by an Italian authorized lottery agent, who locally represents (in Italy) the foreign agent/provider of the Service;
- checking the lottery form once the lottery results are published;
- receipt of payment from the Participant for the lottery form, and providing the Service to the Participant (clearing activities are performed locally in Italy);
- collecting the winnings, if any result, from the Italian official lottery; and
- transfer of the winnings to the Participant.

BRIEF OVERVIEW OF THE CURRENT ITALIAN LEGAL FRAMEWORK ON PUBLIC GAMES

The Service, according to Italian law, falls within the category of the so-called *Distance Gathering of Public Games*, and could be provided through a *System of On-Line Game Accounts* (“*Sistema di Conti di Gioco*”), as will be discussed in the following paragraphs.

Prior to any consideration of the question of the legal definition and, consequently, the operating procedures of the Service, an overview of the existing Italian rules on Public Games will be helpful.

The Italian legal system considers gambling to be illegal (art. 718 Code of Criminal law), with the exception of games and bets authorized and managed by the State. As a consequence, gaming and betting are legal as long as they are controlled and guaranteed by the State. Any other expression of betting and/or gaming against payment is illegal.

According to Italian law (d. lgs. n. 496/1948), the regulation of Public Games is reserved to the State, or to other entities explicitly appointed by a national law. These entities are entitled to discipline, organize, and manage any “*game involving forecasting against payment of a stake.*”

The Italian government entity charged with the direction, organization, control, and coordination of Public Games activities is the AAMS (*Amministrazione Autonoma Monopoli di Stato*, a body of the Italian Ministry of Finance), appointed by D.P.R. n. 33/2002 and l. n. 178/2002.

The practice and commercialization of those activities by private subjects is forbidden, since it is considered a question of public order and public

Alessandro del Ninno is a lawyer in the Information & Communication Technology Department of Studio Legale Tonucci & Partners in Rome. He may be reached by e-mail at adelninno@tonucci.it.

security. However, law n. 383/2001 (amending art. 88 T.U.L.P.S., *Testo Unico delle Leggi di Pubblica Sicurezza*, Italian consolidated text of laws on public security) established that the State might allow private persons or entities to offer Public Games by means of a **Public License** (“*Concessione di gioco pubblico*”), which is granted to selected operators.

These operators (“**Licensees**”) must be chosen through public bids called by AAMS, in accordance with the Italian Code of Public Contracts (enforcing EU directives 2004/18 and 2004/17), which is applied to any kind of public procurement (art. 21, d.l. n. 78/2009). The next bids will be called from 16.5.2011 (d.l. 40/2010, art. 2, par. 2 *sexies*).

Public Licences assigned through this procedure are taken out for a period of 9 years. Art. 21, d.l. n. 78/2009 establishes the requirements for the participation to the selection of the Licensee.

Different types of gaming fall under the category of “Public Games.” Italian legislation provides definitions and regulations for each type, such as Lotteries (National or Local), Numerical Games with National Totalizer (for example “*Superenalotto*”), Horse Betting, Sport Events Betting, Ability Games, Bingo, etc. With reference to the Service, the present opinion will be focused on the rules pertaining to National Lotteries, which are divided into “*Instant Lotteries*” and “*Lotteries with deferred draw*”.

Different provisions are specified on the basis of the method of stake gathering. From this perspective, the legislation identifies two categories such as:

- a) **Traditional gathering**, carried out in “on earth” or terrestrial betting offices, where Participants physically go to play and pay for the stake.
- b) **Long-distance gathering**, carried out through telematics (web sites, television, telephone, etc). In this case, Participants do not access the game directly, but rather through a System held by the Licensee or an authorized third party.

The rules for the so-called “**Distance Gathering of Public Games**” category (under which the on-line gaming falls) is provided by l. 248/2005 and l. n. 88/2009, art. 24, par. 11–26.

Since the imagined Service should be provided through the Internet, the above-mentioned provi-

sions on Distance Gathering of National Lotteries in particular (l. n. 88/2009, art. 24, par. 11, lett. h) have to be taken into account.

For this purpose, a linguistic clarification is needed. According to Italian legislation, the word “*Lottery*” is connected with a specific meaning, corresponding only to a specific game; *i.e.* the drawing of **tickets** for a prize. Such a meaning may be different from the wider meaning the word has in the English language, where a lottery is any form of gambling which involves the drawing of lots for a prize.

So, for instance, “*Lottery*,” in English could also refer to those games whose object is to match some numbers out of a total and, should a player match all of them, he/she wins the jackpot. In the scope of Italian legislation, such games are not considered as “*lotteries*,” but rather as “*Numerical Games with National Totalizer*” (Italian “*Superenalotto*” is an example of this), and are regulated under different rules.

Accordingly, the following paragraphs shall consider the Service as an activity aiming at purchasing and selling tickets within the Italian National Lotteries. Afterwards, an additional overview about Distance Gathering of Numerical Games with National Totalizer will be provided.

DISTANCE GATHERING OF NATIONAL LOTTERIES: THE OPERATIVE RULES

Traditional Gathering

Italian National Lotteries, regulated by D.P.R. n. 1677/1948, are connected to one or more historical, artistic, or cultural events and are scheduled every year until a maximum number of 13 lotteries per year is reached (for example “*Lotteria Italia*,” “*Gran Premio di Agnano*,” “*Gran Premio di Monza*,” and “*Regata Storica di Venezia*”). Participants can purchase an unlimited number of tickets during the 60 days before the official draw, which takes place on the occasion of the connected event (except for *Lotteria Italia*, whose tickets are on sale for three months before the draw). Results are published on the Italian Official Journal.

As mentioned above, the practice and commercialization of Public Games, including National Lotteries, is permitted only to official Licensees (at the moment, the selected Licensee for National Lotteries is “*Consorzio Lotterie Nazionali*”), who

operate through a sales network constituted by points of sale appointed and authorized by the Licensee himself.

Ticket sales are therefore reserved to authorized sellers, who receive 10% of the ticket price for their service and who are directly authorized by the Licensee, which informs AAMS.

Prizes are payable to the bearers of the winning tickets, who are requested to show the tickets to AAMS within 180 days from the official draw, together with a “payment request form” containing the bearer’s particulars and references (including bank account number).

Should the bearer reside abroad, he/she is allowed to show the ticket and the payment request form to the local Italian Embassy/Consulate.

However, another distinction has to be considered in the scope of National Lotteries legislation, as different rules govern “*Lotteries with deferred draw*,” such as those just described, and “*Instant Lotteries*” in which Participants can purchase tickets containing a hidden combination of numbers which can be immediately disclosed after the purchase (usually by scratching away a film covering the numbers).

According to the legislation (D.M. n. 183/1991), Instant Lotteries ticket sales are reserved to authorized sellers, who receive 10% of the ticket price for their service and who are directly authorized by the Licensee (informing AAMS)—but who also need to be authorized by the local police, as provided by art. 88 and 86 T.U.L.P.S.

L. n. 102/2009 (art. 21) establishes new provisions for issuing Licenses of Public Games with reference to Instant Lotteries, specifying that Licenses are accorded for a maximum period of nine years (renewable once for an additional nine years), to a maximum of four national or EC-qualified operators who hold the necessary requisites of moral, technical, and economical reliability (new calls have been published on 11.8.2009).

Abroad, the sale is possible only by means of an agreement between the Licensee and authorized bodies in the foreign Countries.

Prizes are payable to the bearers of the winning tickets directly by the seller for prizes under euro 10.000, and by the Licensee for higher prizes, after verification of authenticity. Payment must be done within 30 days after presentation of the ticket.

Legal punishment for unlicensed gathering practices are provided by l. n. 401/1989 (art. 4), and con-

sists of sanctions such as fines and arrest—in particular for “unauthorized sale of lottery tickets (art. 4 n. 4) and “gathering of stake reservations, win crediting and promotion and advertising made by any means of diffusion” (art. 4, n. 5).

Distance gathering

Distance Gathering of National Lotteries (and of the other Public Games) is regulated by L. n. 311/2004 and L. n. 88/2009 (and by AAMS Decrees of 21.3.2006 and of 13.4.2006), which confirm that permission for any National Lotteries Distance Gathering is accorded only to Licensees chosen by means of a public procurement procedure, up to a maximum number of 200. Licenses are accorded to **qualified operators** who hold the necessary requisites of moral, technical, and economical reliability described in art. 24, par. 15 of L. 88/2009 itself.

Nevertheless, until the new calls for tenders are defined (the bid has been published on 11.3.2009), already-existing Licensees of traditional gathering (*i.e.* Consorzio Lotterie Nazionali) can ask AAMS for authorization for National Lotteries Distance Gathering, within the experimental period

Authorized Licensees can, in turn, give permission to third parties (“**Distance Sales Point**”) for collecting Participant’s stakes, with the previous authorization of AAMS, by use of a standard contract approved by AAMS. Through authorized Distance Sales Points, Licensees can offer gaming to any Participants, under the conditions described in the following paragraphs.

Legal punishment for unlicensed distance gathering are provided by l. n. 401/1989 (art. 4 par. 1), and consist of sanctions such as imprisonment between six months and three years—particularly for “unauthorized practice of organization, intermediation and distance gathering activities in any kind of Public Game managed by AAMS.” L. 266/2005 gave AAMS the power to ask web providers to obscure unauthorized web sites practicing distance gathering.

AAMS also issued a Decree dated 2.1.2007 (so called “obscuring Decree”), enacting the power to obscure any unofficial web site operating unauthorized distance gathering of Public Games. In addition, according to art. 4 of this Decree, AAMS may set a pecuniary sanction ranging from euro 30.000 to euro 180.000 for internet providers who

allow unauthorized web sites to use their own connection to the web.¹

Further, Licensees are requested to bind themselves not to offer gaming by means of websites other than AAMS-authorized ones. Across-the-border gathering through foreign web sites is forbidden if made by non-AAMS-authorized operators.

While in traditional gathering, Licensees operate through a sales network constituted by points of sales appointed and authorized by the Licensee himself, in the case of Distance Gathering (with specific reference to on-line gathering), the Licensee, in order to be granted AAMS authorization, shall hold a System of On-Line Game Accounts (“the **System**”), directly or through another subject (“the **Owner of the System**,” “Titolare di Sistema di Conti di Gioco”) who needs AAMS authorization as well. In addition, a Distance Sales Point needs to have a System as well, which will be integrated with the Licensee’s one.

Such System is intended to manage the mandatory Game Accounts and Game Account Agreements that the Participants must subscribe with the Licensee, according to art. 24, par. 19, l. n. 88/2009.

As a matter of fact, National Lotteries Distance Gathering, as well as any public game distance gathering, is permitted under the following conditions:

Distance gaming is allowed only after identification of the Participant. For this reason, the Licensee shall subscribe with each Participant a **Game Account Agreement** (on the basis of the form provided by AAMS, and with attachment of a copy of identity card) and open a **Game Account** for each Participant (no more than one Account and one Agreement for Participant).

The Game Account Agreement, whose governing law can only be Italian law, establishes the operating rules of the Game Account (mandatory clauses to be included in the Agreement are provided by art. 24, par. 19 of l. 88/2009, and by AAMS Decree dated 21.3.2006, as integrated by Decree dated 27.6.2007), which is an individual deposit of money of the Participant, held by the Owner of the System, recording any operations made by/ addressed to the Participant, including stakes and winning payments. The Account can be recharged on-line or through the Points of Commercializations (see following paragraphs).

The Account is periodically checked and verified by AAMS. For this reason, specific rules for management of the System and of the Accounts are

addressed to the Owner by AAMS Decree dated 21.3.2006, as integrated by Decree dated 27.6.2007. The Owner of the System is responsible for immediate and correct execution of stake computation, through which the original credit has to be clearly identified.

In case the Participant wins, the Licensee is responsible for cashing out the win. The winnings have the commission due to the Owner of the System and/or the Licensee deducted.

The Owner of the System may promote and distribute Game Account Agreements also through the so called “Points of Commercialization”—*i.e.* those premises/operators which are authorized by AAMS (and by the Licensee in case it does not own a System) to carry out different activities related to the promotion and the sale of official national games. Those are physical shops where Participants can subscribe Game Account Agreements and/or recharge their own Game Accounts.

DISTANCE GATHERING OF NUMERICAL GAMES WITH NATIONAL TOTALIZER: THE OPERATIVE RULES

Traditional Gathering

As Public Games, Numerical Games with National Totalizer, (*i.e.* those games whose object is to match some numbers out of a total and, should a player match all of them, he/she wins the jackpot, as already specified), are permitted only to official Licensees (at the moment, the selected Licensee for Superenalotto and similar games is “SISAL”), who operate through a sales network consisting of points of sales appointed and authorized by the Licensee himself. As previously mentioned, stake gathering can only be practiced in authorized lottery offices, whereas any kind of intermediation is strictly forbidden (L. n. 549/1995, art. 3, par. 328).

L. 248/2005 gives AAMS the power to regulate the traditional and the distance gathering of this kind of Public Games. AAMS Decree dated 11.6.2009 implements this provision, and establishes a series of obligations for the Licensee and for the Sale Points, especially with regard to management of stakes and wins.

¹As of April 12, 2011 the number of illegal web sites obscured by AAMS equaled 3,103.

Distance Gathering

The same regulation provided in case of Distance Gathering of National Lotteries is applicable to Distance Gathering of Numerical Games with National Totalizer, according to AAMS Decree n. 21732/2009.

For this reason, distance gathering is only permitted to Licensees and to authorized Distance Sales Points by subscription of a standard contract approved by AAMS.

A System is needed to manage the on-line gathering of these games (the Distance Sales Point needs to have a System as well, to be integrated with the Licensee's one), and Game Accounts Agreements have to be signed by Participants. In addition, Game Accounts have to be opened.

CONCLUSIONS: PRACTICABILITY AND LEGAL COMPLIANCE OF THE SERVICE

On the basis of the above, it may be concluded that the imagined Service could be legally provided in Italy by a foreign Agent only in the following cases:

- a) as Licensee of Public Games;
- b) as provider of the service called System of On-Line Game Accounts to a Licensee;
- c) as an AAMS authorized Distance Sales Point.

Further, since clear identification of each singular Participant is needed for legal exercise of on-

line gaming, it is not permissible for a foreign Agent to purchase Game Account Agreements or any other form of stake by means of local representatives in Italy (from an Italian authorized lottery agent) and sell them to Participants abroad without complying with at least one of the above-listed cases.

The intermediation, in similar cases, could obstruct the continuous flow of information between the Participant and AAMS, which is required in any case of on-line gaming (the rationale of the above-mentioned provisions being public security reasons, such as the prevention of criminality infiltration, misappropriation of public money, and juvenile gambling).

Since the imagined Service should be based on an Italian website, Participants should have to register directly on this website, opening the Game Account and signing the Game Account Agreement. In this case, the web site could only be indicated to the Participants, without practicing any kind of intermediation (which is, as already underlined, illegal). On the other hand, to manage the imagined Service directly, it should be mandatory to open a(n Italian) web site, ask AAMS for authorization as a Distance Sales Point or as an Owner of the System, and, in both cases, sign an agreement with each National Licensee (depending on the games offered).

The case under (a), *i.e.* the possibility to become a Licensee in Italy, appears to be feasible only when new calls for tenders are published; however, this possibility involves a significant investment in terms of technology, guarantees, and resources.

