

# Striking Developments in the Italian Gaming: Market Liberalisation Mission Accomplished

*An article by Qurinio Manchini, attorney-at-law, Sinisi, Ceschini, Mancini, Italy, Cooperation Partner of Hambach & Hambach Law Firm*

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Soon after the L'Aquila quake, the Berlusconi cabinet pledged to quickly rebuild the town by launching a highly-prioritised, very ambitious and predictably expensive reconstruction plan whose exceptional funding instruments were identified in a governmental emergency decree dated 28 April 2009 ("the Abruzzo Decree") promptly converted with a few amendments by

the Parliament into Law No. 77 of 24 June 2009. One of the most relevant chapters of the Abruzzo Decree deals with measures concerning the gaming sector which can be summarised as follows:

1. Legalisation of online fixed odds games of chance (online casinos and Vegas-style games)
2. Legalisation of online poker and ring games
3. Mandate to AAMS (the Italian gaming regulatory authority) within 60 days from the enactment of the Decreto Abruzzo, to regulate betting exchange, betting on virtual events and video lottery games ("VLTs"). Actually all such games had already been legalised in 2006 yet AAMS had since failed to implement the relevant rules so they had been laying for long time in a sort of regulatory limbo
4. introduction of an unprecedented profit-based tax regime with a flat 20% rate applying to all new games listed above other than the VLTs. This provision is of paramount importance as it paves the way to the launch of games that otherwise could have never been offered in Italy given its penalising turnover-based tax regime which notably will continue to apply to sports and horse races betting, bingo, lotteries and skill games (including online poker tournaments that will thus continue to be taxed at 3% of the total tournament buy-ins sold by the operator)

AAMS is currently in the course of implementing the regulations concerning all the new games covered by the Decreto Abruzzo and while it will probably miss the 60-day deadline assigned to it by the government, it can still be expected that the new rules will fall in place some time in the autumn season.

In the meantime, on 4 August 2009 another important governmental emergency decree was published in the Official Gazette of Laws and Regulations pushing urgent measures to

tackle the worldwide economic crisis that is badly gripping Italians too ("the Anti-crisis Decree").

One of the most important revenue-raising provisions is set out at article 21 of the Anti-crisis Decree wherein a lottery tender is called for the award of up to four brand new licences when the current exclusive one, held by Lottomatica-owned Consorzio Lotterie Nazionali, expires in 2010. These are the main tender guidelines on which basis AAMS will within 30 days have to draw up and issue the tender paper:

Licensees will be entitled to an 11,90% fee (including the 8% fee due to the selling points) charged on all sold lottery cards

- Payout no higher than 75%
- Irrespective of the number of actual licence bidders (1 to 4), the minimum guaranteed bid ("MGB") revenue will have to fetch €500 mln for the current year and to €300 mln for 2010 (the MGB payment may be split in two instalments payable respectively in 2009 and 2010)
- Each licence bidder will have to set up an exclusive distribution network of no fewer than 10.000 selling points to be activated by no later than 31 December 2010
- Licences will last 9 years and may be extended only once. The 9-year duration period will be split in two phases respectively of 5 and 4 years. At the end of the first period AAMS will evaluate each licensee's performance and subject to positive assessment thereof, it will allow the licensee to carry on for the second and final 4-year period

Article 21 of the Anti-crisis Decree also deals with the VLTs establishing that AAMS will have to take immediate steps to start the VLTs testing phase that will be initially limited only to the 10 operators currently holding a licence to remotely connect the terrestrial network of slot machines to the AAMS centralised system. Eventually AAMS will call a fresh

VLT licence tender open to national and EEA-based bidders subject to certain operational terms as well as to payment of an €15.000 licence fee per each VLT terminal to be connected.

Last but definitely not least, on 29 July 2009 Law no. 88 of 7 July 2009 ("Law 88/09") carrying the new remote gaming (ie. online, mobile and interactive television) frame rules became effective. At the time this article is being written AAMS has not yet implemented the relevant regulations and relevant licensing requirements although it is expected that also this process like the others quoted above will not take too long.

The main features of the Italian-style remote gaming as re-shaped under Law 88/09 can be listed as follows:

- A specific AAMS-granted, 9-year licence is required for the offer of remote gaming services
- The one-off cost of the licence is €350.000 payable upon licence issuance
- The remote gaming licence currently covers: fixed odds/pool sports and horserace betting, skill gaming (including online poker and any other card tournaments which are all eligible for skill gaming classification), online scratch-and-win (subject to a sub-distribution agreement with the current exclusive lottery licence holder), and online bingo, BUT
- When AAMS regulates fixed odds games of chance (ie online casino) online poker and other cash games, bets on virtual events and betting exchange, these games too will be included in the remote gaming licence. Such regulatory process is expected to be completed in the autumn 2009
- The AAMS licence is open to any applicant based in an European Economic Area jurisdiction ("EEA" ie. European Union countries plus Iceland, Norway and Liechtenstein). Up to 200 fresh remote gaming licences in addition to the existing ones may be granted by AAMS
- The licence may be issued directly to a foreign

applicant provided it holds an EEA passport

- The licence may be issued even to a non-operator (such a startup or a company coming from a totally different business) subject to (i) release in favour of AAMS of an €1,5 million bank guarantee and (ii) a certification by an independent authority that the applicant holds all required technological infrastructure and management resources to run the licence
- Remote gaming services can only be offered to Italian residents through a dedicated platform identified by the '.it' suffix which must be fully linked up the centralised system ran by AAMS (via its technological partner SOGEI) so that each bet/wager placed by an Italian customer can be recorded, monitored, tracked, validated and taxed
- Provision of remote gaming services from a foreign-based '.com' platform to Italian residents is strictly forbidden and subject to the blacklist restrictions mentioned in the previous chapter as well as to prosecution
- Whoever offers online gaming services in Italy without holding an AAMS-granted licence is subject to imprisonment from 6 months up to three years  
Whoever organises, offers and takes remote bets in Italy on any games regulated by AAMS but in a way other than that required by the AAMS rules, is subject to arrest from three months up to one year and to a fine ranging from €500 to €5000 even if the violator does hold an AAMS licence
- Foreign-based AAMS licensees are allowed to keep their gaming servers abroad provided they are located in the EEA space and a full, real time connection with the AAMS centralised system is in place
- The software running on all games offered on the '.it' platform must be certified by an AAMS-approved testing laboratory

The very peculiarity of the Italian-style remote gaming model is that the operators' platforms must be interconnected with the AAMS centralised system and database at all times for bet validation, compliance checks and taxation purposes. In practice this control system works as a three-way system where all player-related information received by the operator must be conveyed in real time on to AAMS that, if all required data have been collected, will validate the bet/wager and send a signal back to the operator who may then take the bet/wager and process it.

Tax-wise, as already mentioned above the model that will soon be enforced by AAMS is a blend of turnover-based ("TOB") and gross profit-based ("GPB"). The following games will continue to be subject to TOB taxation (relevant applicable rates in brackets): sports betting (3,5% on average), horserace betting (nearly 10%), skill-gaming (3% flat), bingo (nearly 23,8%) and lotteries. All brand new remote games soon to be regulated by AAMS namely online poker and ring games, online poker, betting exchange and bets on virtual events, will instead be subject to GPB taxation at a flat 20% rate.

Altogether the three landmark pieces of legislation discussed above (Decreto Abruzzo, Anti-crisis Decree and Law 88/09) the enabled the Italian to brilliantly – or should we rather say smartly – achieve a dual goal: collecting more (and big) money from the gaming industry while further opening up the market and definitely modernising the laws and regulations on the gaming business.

On top of that, in addition to keeping its national licence regime fully in place with the official blessing of the Brussels authorities, Italy also became the champion of a pragmatic and reasonably flexible regulatory model which is currently the only realistic alternative to an Europe-wide harmonisation of the licensing rules. Indeed the Italian model (including a beefed up version of the "blacklist restrictions") seems to have been adopted with appropriate

changes by other EU jurisdictions like France and Denmark which have largely drawn from it to open up their respective markets thereby combining a system of internal rules and controls still issued and enforced at local level, with less administrative red tape and lighter operational hurdles for licence applicants based and licensed in other EU jurisdictions.

All the above regulatory developments occurred (and continue to unfold) so quickly over the course of the last four months so there is little doubt, if any, that Italy is indeed the country of miracles.

Source: TIME LAW NEWS 4/2009 ([www.timelaw.de](http://www.timelaw.de)) Hambach & Hambach Law Firm / Kommunikation und Recht