

NAPLES'S PROHIBITIONISM, RISK OF TOTAL DISMISSAL OF BETS AND SHUTING-DOWN OF LEGAL GAMBLING OPERATORS

Following **Naples's City Council Deliberation n. 74 of 21/12/2015**, which was published on the municipal public registry from 04/01/2016 until 19/01/2016 "**Gaming rooms and lawful games Rules**" (**Regolamento sale da gioco e giuochi leciti**) has been approved. This follows another decision taken by the City Executive Committee, resolution n.993 of December 23, 2013, whose agenda was to increase awareness of risks connected to gambling. Therefore, the City Council decided to enact an anti-legal gambling regulation, railing against every gaming room (gambling, VTL and others) and every equipment as per comma 6 a).

If closely scrutinized, what emerges is that the City Council has: (i) set a minimum distance such that it basically results in a prohibition of legal gambling; (ii) established mandatory scrutiny of every type of transfer of registered owner in order to terminate all of the existing licenses, including gambling ones; (iii) put in place time restrictions that are more of a daily closing of a shop, rather than a regulatory attempt of it (we are talking about 8 or even of 5 daily hours per device); (iiii) complete ban on gambling advertising.

What is most striking is that such prohibitionist measures (which are clearly illegitimate) are enacted in a time when both the jurisprudence and the legislator are blatantly rebelling against such uncoordinated and a-technical provisions. As already recalled, on the one hand the legislator asked the Joint Conference to put an end to these types of regulations, on the other the jurisprudence is clearly stating that the Municipalities cannot avoid inquiries concerning the crowding out effect of their measures, nor can they refrain from assessing the proportionality of the time restrictions imposed. All of this is true not including the latest remission to the Constitutional Court for the question of legitimacy of an anti-legal gambling regulation in Puglia.

We already discussed about legal gambling operator's expectations from the Joint Conference. Just as we already talked about jurisprudence. Nevertheless, it is worth recalling a recent Council of State's ruling which declared illegitimate the minimum distance for the same reason we believe it to be true. Said ruling of 10.02.2016 (R.G. 4452/2015), which confirms yet another one issued by Emilia Romagna's Regional Administrative Court (TAR) which affirmed the appeal of a manager against the minimum distance set by Bologna's City Council, states the following.

First, they clarified that *"In this case, if it is true that dissuasive effect of the minimum distances from gaming room (from places where there are people who need to be safeguarded) fulfils a generally accepted criterion, however what is missing is a technical procedure that actually measures the efficacy of said distance"*.

Second, it has been clarified that *"Bologna's Municipality should have extensively analyzed the impact of pathological gambling in its area, then assess a theoretical minimum distance which would serve the scope, and verify if such distance is proportionate and sustainable, meaning that it should not prevent business form relocating to different areas."*

Finally, it has also been specified that *"It is possible to affirm that in such field they have a broad discretionary power, which can hardly be litigated. However, in this case, the appellant Municipality did*

not argue, nor does the documentation provided seem to suggest so, that such assessment had been carried out."

Naples's minimum distance regulations are exceedingly complex: the prohibition ranges for 500-meter-wide from sensible areas, other types of properties and large areas also fall under the ban, instead for ATMs, banks and postal services 200-meters-range, and other restrictions for equipment. All of it is designed to basically obtain a 97% restricted area.

In other words, Naples's regulation could without questions be defined as another crowding out effect regulation.

This is true also because of both time restrictions imposed and for the complete advertising ban.

The illegitimacy of such amputations (and not the law itself) have often been recalled. Even in this case the deviation from the national law is multiple and evident, and it also deviates from regional law.

Our attempt to warn against such paradox mostly focuses on the betting aspect the matter.

As is widely known, on June 30, 2016 gambling licenses will expire. Moreover, it is also common knowledge that, since May 2016, the 2016 Budget Law has called for a new bid (art. 1 comma 932 of the 2016 Budget Law). Needless to say, that the existing legal operators in Naples, if deemed allottees or even if they are just in charge of it, will be obliged to request for new license to the city's Municipality. Due to the current 97% inhibition of the area, as already discussed, the existing businesses might be located in a forbidden area, however it is impossible for them to relocate because basically there are no places not covered by regulations in Naples.

The consequences of such paradox are self-evident and are of national interest, especially if we consider the fact that such paradox does not only apply to Naples's Municipality, but it basically covers 100% of other areas subjected to similar local regulations. The consequences are and will fall on the one hand on the economic interests of legal operators and of connected business activities, and on the other hand citizen's interest and the state of health, public order and state's revenue.

Legal operators, a lot of them, have appealed against regulations, even the one in Naples. What is expected is a strong protection that is more than mere jurisprudence, or at least more than the current situation. However, the focus is on the outcome of the Joint Session.

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