Geronimo Cardia

THE TERRITORIAL ISSUE

Prohibition on legal gambling as set forth by local regulations

ENGLISH VERSION

Collection of contributions and writings since 2011

gnmedia

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* This part is available only in the Italian version

To my father,
who has decided since a few years to follow us from too far away,
and to my brother who always succeeds in the magic of making me feel
close to him.

PREFACE

PIER PAOLO BARETTA, SECRETARY FOR ECONOMICS AND FINANCE

How can the State step in to foster public gambling's good governance? Is it possible to find a balance between the "recreational" aspects of it and the "pathological" ones? Are there the conditions for an agreement between the State and the Local Institutions over such a delicate and yet controversial issue? Germonimo Cardia's book tries to provide some answers to said questions. As also recalled in the preamble to this book by Alessio Crisantemi, the author does not have the presumption to deliver a final verdict on the matter. Nevertheless, by delving into the existing legal framework the book gives some insights on which direction one can pursue.

A first answer is given by the fact that gambling is covered by Statutory reserve. Apart from the to collect taxes, this is first and foremost due to the need of maintaining public order and security, and at the same time, hinder all forms of unlawful betting and gambling, which are intrinsic of human societies.

The scenario that we are facing is not the brightest one: changes brought by technological development and by the global market, especially in the gaming industry, have not evolved hand in hand with the correspondent regulations that, though aiming at restraining the spreading of unlawful gambling, do not properly address the spreading of the negative social effects connected to gambling.

Last year, the legislative action undertaken attempted to restructure the entire sector. However, although this attempt was received bipartisan support, it did not succeed in doing so and, later on when the legal mandate expired, it was only possible to safeguard the fundamental aspects aimed at the protection of public health and trust and, we must say, the likewise important government revenues.

It is not by chance that in the 2016 Stability Law, in addition to specific technical norms for the reorganization of the sector, has codified the agreement between the various local institutions in order to define the parameters of allocation and the territorial concentration of lawful gambling business.

A leading role has been played by the Joint Session whose goal was to make the local institution requests uniform and coherent, but also legitimate and organized.

Today, we assist to a proliferation of Local regulations, most of which are restrictive. Cardia's book provides us with a comprehensive view of this phenomenon. Because of the lack of a structured policy at a national level the local institutions were able to enact legislation, most of which provided for a minimum distance between gaming rooms and sensible areas and time restrictions.

If it is true that regulations are necessary, the "prohibitionist" approach does not offer a solution because, generally, it leads to the strengthening of the illegal gambling supply. Unlawful gambling can continue to operate thanks to its products which are not subject to any kind of norms or controls and therefore it can potentially increase the pathological expression of gambling aspect of it which, on the contrary, everyone is trying to oppose.

Such a problem has been object of debate between associations which deal with these kinds of discomforts and the local institutions. What emerged from the debate is that, in order to properly manage gambling, we need common norms. For this reason, the 2016 Stability Law has imposed a 30% reduction of slot machines.

To conclude, considering the current developments occurred in the different Territorial Regulations, aimed at preventing and controlling the gambling phenomenon, it seems every day more necessary a comprehensive picture, including increasing controls over the illegal network, which is a tool for money laundering and an object of interest of the organized crime and, on the other hand, a territorial uniform distribution of lawful and certified gaming rooms and a stronger protection of the weakest segments of the population, especially those who are under age.

PREAMBLE

ALESSIO CRISTANTEMI, GIOCONEWS.IT

Is it possible to maintain the Statutory reserve over the public gaming legislation, without compromising or downplaying the independence of local institutions? The answer to this question is not plain and simple. The 2016 Stability Law sets April 30, 2016 as the deadline by which finding a solution to this problem within the Joint Session.

Beside the deadline, which are clearly important for the protection of the market and of state's revenue, the priority goes to restoring a balance between different tools through which the State can manifest its power of intervention. It should perfectly reflect the subsidiarity principle, which, in the last years, has experienced deficiencies and mistakes that produced insufficient results on both sides in which 120.000 operators were working directly and by means of satellite activities.

It is a primarily important industrial sector, not only because of the occupational and economic role it plays but also because of the lawfulness bulwark role played in a world dominated by an out-of-control supply and, finally, because of the social consequences that derive directly from its management (or that would derive from its ineffective or inexistent regulation, as it happens in other countries).

The aim of this book is to try to find an answer to the initial question, to solve a conflict that, back when no one would have expected, "Gioco News" defined as "Territorial Issue". Such definition was purposely adopted. This book is an attempt to make commonly known the experiences gathered in courthouses, where the subject has often been faced up, of course, without being capable of stating an absolute judgment and, in the same way, the book does not have the presumption to find an absolute solution or the pride to point at ready-made prescriptions, but exhorting the different actors involved to an overall reflection.

In this attempt of inspection and analysis, Geronimo Cardia, leads us across the national and territorial regulations maze, pushes the reader to an incessant work of reasoning and discipline, fed by some legislative paradox and some

serious outcomes of this issue, which is completely illogical and distinctly Italian. It is time to put an end to this clash, remembering, however, the corresponding justifications that, in any case, exist and brought to this conflict and, find a balance that we have lost over time (since 2011 till today, as illustrated in the following pages) leading us to build a sustainable future, for everyone.

INTRODUCTION

I have been asked to sum up the conversation concerning the conflict between, on the one hand, the territorial, regional, county and municipal law and, on the other, the national law. I will gladly do so, as in Part One. I also want to thank "Gioco News", in particular Alessio Crisantemi, who has been highly receptive to various comments I made. Nevertheless, I believe it is important to briefly and consistently summarize my thoughts concerning such issue, thoughts which I developed throughout a long-time span.

Since 2011, legal gambling operators have been trying to highlight at all levels (judicial, cultural, press) how the laws concerning the allocation and distribution arrangements of legal gambling services enacted by different institutions (such as Regional, County, Municipality – the latter having to comply with regional and county laws if existing) are inadequate, inapplicable and illegitimate. Such phenomenon impacts the legal effects of said laws.

First of all, despite the fact that such question seems to be a cause of concern only for the territorial law, said issue is very important, especially because it has reached the national level. There are many regional and county anti-legal gambling laws [1], and even more municipal measures [2].

1. Puglia's R.L. n. 43/2013, Piedmont's R.L. n. 1/2014, R.L. Lombardy's R.L. n. 11/2015 and n. 8/2013, Friuli Venezia Giulia's R.L. n. 1/2014, Valle d'Aosta's R.L. n.14/2015, Veneto's R.L n. 6/2015, Liguria's R.L. n. 17/2012, Emilia Romagna's R.L. n.5/2013, Tuscany R.L. 57/2013 and n. 85/2014, Lazio's R.L. n. 5/2013, Umbria's R.L. 21/2014, Abruzzo's R.L. n. 40/2013, Campania's R.L. n. 1/2016, Basilicata's R.L. n. 30/2014, Trentino's R.L. n. 13/2015, Alto Adige's R.L. n. 13/2010

2. Regulation adopted by Naples City Council decision n. 71/2015; Regulation adopted by Lodi City Council decision n. 112/2015; Regulation adopted by Genova City Council decision n. 21/2013; Florence City Council regulation n. 1/2011; Bologna City Council ordinance n.140904/2015; Milan City Council ordinance n. 63/2014; Terni City Council ordinance n. 84869/2010; Regulation adopted by Vicenza City Council decision n. 62/86323 of 2011; Regulation adopted by Pitonello City Council decision n. 26/2012; Regulation adopted by La Spezia City Council decision n.1/2012; Regulation adopted by Imperia City Council decision of 18.2.2010; Regulation adopted by Recco City Council decision n.3/2008 as

Second, such issue is particularly important because it affects an entire industry and all its related activities: the existing laws mainly damage legal gambling operators, while, depending on the initiative, state licensed operators, providers, slot and video lottery vendors, bets and bingo providers, no one excluded, together with every technology supplier, manufactures and everyone else involved.
Third, it is important to focus on it because fit and fair regulations – just as much as unfit and unfair regulations – of legal gambling inevitably impacts and creates effects on health, public order and the states revenue.
Throughout the years the territorial law has introduced a series of disincentives to the allocation of legal gambling services and a series of restrictions on it. Among others there are the following: (i) a minimum distance between slot machine and sensitive locations (ii) time restrictions (iii) absolute advertising ban. Such impediments concern both existing and future business.
The legal gambling operators have always pointed out some crucial aspects of the above-mentioned limitations.
First, an analysis of the current measures adopted in different locations reveal

amendments; Salerno City Council ordinance n. 42421/2011; Umbria City Council ordinance n. 29700/2010; Regulation adopted by Riva del Garda decision n. 21/2013; Regulation adopted by Padua City Council decision n. 34/2010; Regulation adopted by Trento City Council decision n. 56/2012; Regulation adopted by Ventimiglia City Council decision n. 75/2014; Regulation adopted by Lecco City Council decision n. 33/2011; Regulation adopted by Valamadrera City Council decision n. 56/2014; Regulation adopted by Borgo Valsugana decision n. 32/2012; Regulation adopted by Gavello City Council decision n. 34/2012; Regulation adopted by Olgiate Olona decision n. 39/2010; Regulation adopted by Serravalle Pistoiese decision n. 19/2010; Regulation adopted by Brescia City Council decision n. 153/36849 of 2010; Regulation adopted by Bra City Council decision n. 16/2011; Regulation adopted by Bovezzo City Council decision n. 25/2012; Rovereto City Council deliberation CC n. 6/2015; Regulation adopted by Prato City Council decision n. 61/2012; Regulation adopted by Casteggio decision n. 79/2014; Regulation adopted by Mirabello City Council decision n. 62/2014; Regulation adopted by Gabliate City Council decision n. 79/2014; Regulation adopted by Barzanò City Council decision n. 39/2011; Regulation adopted by Masnaga City Council decision n. 3/2012; Regulation adopted by Pesaro City Council decision n. 61/2010; Regulation adopted by Ponte San Pietro City Council decision n. 31/2010; Formia City Council regulation approved September 2014; Formignana Municipality Regulation; Ostellato Municipality Regulation; Regulation adopted by Lagosanto City Council decision n. 18/2011; Regulation adopted by Peccetto Torninese City Council decision n. 20/2013.

that: (i) the minimum distance varies from one place to another (either because of the different minimum distance imposed, or due to different sensible locations) (ii) different time restrictions (either because of the different total amount of allowed hours, or because of the different daily schedule) (iii) different advertising ban (considering that the ban is absolute only in some cases, or that the benchmark has to be set according to national standards, or because it is unnecessary).

Second, the inquiry acknowledges that the targeted public interest varied from one place to another. In some cases, the law cited health as its target, in others the goal was the protection of the weaker segments of society, furthermore the objective was public order, finally the law cited urban traffic.

Third, it has emerged that these provisions are not adequate for finding a solution to issue raised. For example, it seems that the banning of the opening of new gambling facilities does not necessarily protect health nor the weaker segment of society, since that there may not be restrictions in the surrounding areas. Moreover, another example is that it has been proven that time restrictions on bakeries does not necessarily reduce the number or people affected by diabetes. There are many viable solutions, but this another matter and we will deal with it another time.

Fourth, it has been stressed that, for law enforcement purpose, the national law establishes and will continue to establish regulations on legal gambling by the so called "quota decrees". Such decrees provide for explicit prohibitions for minors, time restrictions enforced by the local authorities, and advertising restrictions.

Lastly, since 2011 what has been vociferously pointed out is that instead of regulating the allocation and the distribution arrangement of legal gambling services, the existing local laws actually prohibits such activities. This phenomenon is in clear contrast with the national law that has been moving towards the regulation of such matter rather than pursuing a prohibitionist strategy.

Having said that, we will now proceed to analyze the existing advertising ban laws. There is not much to comment about it rather than the fact that a ban concerning non-regulated ads practically prohibits the promotion of legal gambling. Moreover, different laws are put in place in different areas. For example, if one chooses to sponsor its activities on a nation-wide tv channel, how can he pretend to black out the add in the areas where there are such restrictions? Apart from the fact that the ban is in violation of the principle

of advertising regulation, as clarified by the so called Balduzzi Decree [3] and from the 2016 Budget Law [4], a study suggests that there are many problems

3. Decree Law n. 158 of 13.09.2012 converted into L. n. 189 of 08.11.2012 (the so called Balduzzi Decree): sets advertising regulation as for (a) Art. 7 comma 4: "*It is forbidden to advertise cash prize games during televised or radiocast shows, plays and movies broadcast whose targeted audience are minors, and during thirty minutes before and after their broadcast. It is also forbidden the advertising in any shape or form on daily newspapers and periodicals whose targeted audience are minors, and in cinemas during movies destined to minors. It is also forbidden to advertise cash prize games during televised or radiocast shows, plays and movies broadcast, on the internet in case of even one of the following situations: a) incitement to gambling by glorification of it b) in the presence of minors c) lack of warning concerning the risks connected to gambling addiction, as well as the possibility of consulting information disclosure note about the odds of winning from the Custom and Monopoly Agency, also available in gambling shops;*" (b) Art. 7 comma 4-bis: "*Cash prize games advertising must visibly list the odd of winning for each and every game. In case it is impossible to determine the exact chances of winning, one must disclose the historical percentage of similar games*;" (c) Art. 7 comma 4-bis last sub-paragraph: "*In case of violation (of Art. 7 comma 4-bis) the proponent is obliged to modify the means, terms and number of ads in order to be in compliance with the original advertising campaign, explicitly declaring the requirements as set by this article, and that such repetition is due to the violation of this article itself*;" (d) Art. 7 comma 6: " *Both the purchaser of the add, as referred to in comma 4, and the means of advertisement's owner are punishable by fine of €100.000 up to €500.000*"

4. The 2016 Budget Law affirms that: "*937. Notwithstanding article 7, comma 4 and 5 Decree Law September 13, 2012 n. 58, modified and converted into law by law n. 189 of November 8, 2012, notwithstanding the advertising prohibitions, as set by article 4, comma 2 of the law n. 401 of December 13, 1989, aimed at tackling the practicing abuse of gambling and in order to guarantee to the consumers, the players and minors a high level of protection, in order to protect their health and to reduce possible negative financial consequences connected to a compulsive or excess of gambling, the broadcasting of cash prize games brands must be in compliance with the European Union Commission's recommendation 2014/487/EU of July 14, 2014. The implementation criteria are put forth by the Decree of the Ministry of Economic Affair and Finance, to be adopted by, in coordinating with the Ministry of Health, after consulting with the Media Safeguard Authority, within one hundred and twenty days from the date of entry into force of this law. 938. Advertising is always forbidden in case of: a) promotion of excessive and out of control gambling behavior; b) denial that gambling is likely to lead to risks; c) failure to explicit the terms and conditions of bonuses and incentives; d) claiming or suggesting that gambling can solve financial and personal problems, namely that it is a viable alternative source of income compared to a regular job, rather than being a form of mere entertainment; e) suggesting that the player's experience and playing skills allows him to minimize or eliminate the risks of losing, or that such abilities will allow him to systematically win; f) targeting or mentioning, even implicitly, of minors, or depicting them or a figure-like characters while playing; g) uses of symbols, sketches, characters or people, directly and primary associated to minors, or that create a direct interest on them; h) leading to believe that gambling can contribute to boosting self-esteem, reputation and personal success; i) depicting of abstention from gambling as a negative behavior; l) mistaking the easiness of the game with the chances of winning; m) claiming false information concerning the odds of winning or the economic return that players can obtain from gambling; n) reference to instant credit service that can be used for gambling. 939. It is also forbidden to advertise cash prize games on the radio or television during show whose targeted audience is the entire population, in accordance with EU principles, from 7 a.m. to 10*

connected to the conflict between regional and city laws in contrast with the national ones. Such discrepancies must be solved in a clear and fast manner.

The following regions are affected by such problem:
Liguria [5]
Lazio [6]

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p.m. Specialized media outlets, as established by Decree of the Ministry of Economic Affair and Finance, in coordination with Ministry of Economic Development and deferred prize drawing lot national lotteries, as set by article 21, comma 6 Decree Law July 1, 2009 n. 78, converted into law and amended by Law of August 3, 2009 n. 102 are excluded by this prohibition. Indirect forms of communication connected to the promotion of culture, research, sport, health and assistance are excluded and subjected to this comma. 940. The violation of the prohibitions as put forth by comma 938 and 939 and of the prescriptions of comma 937 is punishable with a fine, as set by article 7, comma 6 of Decree Law September 13, 2012, n. 158, converted into law and amended by Law November 8, 2012 n. 189. The fine is imposed on the party that requested the advertising, on party that carries it out and on the owner of the means through which the publicity is advertised, by the Media Safeguard Authority. 941. The Ministry of Health, in agreement with the Ministry of Education University and Research, shall establish information and awareness campaigns cornering the risks of gambling, even by using its own websites, focusing on all levels of education. In order to increase public awareness such campaigns must focus on the risks and health problems connected to gambling, by providing information about public and private services designed to tackle gambling addiction".

5. In Liguria, besides the territorial laws, one should bear in mind the following local laws concerning advertising:

(i) Liguria's Regional Law of 30.04.2012 n. 17 titled "Gaming room framework", provided for: (a) Art. 2, comma 3: "It is forbidden any type advertisement with respect to the opening or of the existing gaming rooms" (b) Art. 3, comma 1: "The fine, as set by law, is of a minimum € 1,000.00 to a maximum of € 5,000.00".

(ii) Municipal regulations. The following Provisions adopted by decision of the Genoa's City Council of 30.04.2013 n. 21/2013 are provided by way of examples: (a) Art. 9, comma 14, last sub-paragraph: "Outside shop exposition of signs, manuscripts and/or screening of material that advertise the recent or historical victories are forbidden"; (b) Art. 9, comma 15: "It is prohibited the advertising of the opening of a new gaming room"; (c) Art. 25, comma 2: "The violations of the provisions of the Regional Law of 30.04.2012 n. 17 are punishable, as set forth by art. 3 of the same law" (The fine, as set by law, is of a minimum of €1,000.00 to a maximum of € 5,000.00); (d) Art. 25, comma 3 " Other violations of the present Regulation lead to a fine, as set by art. 7 bis of the Legislative Decree 276/2000 of the Consolidated Law on Local Government, whose total amount is determined in pursuant of art. 16 comma 2 of L.689/1981 namely € 500.00"; (e) Art. 25 comma 4: "According to art. 10 of the Consolidated Law on Local Government in case of repetition of the violation it is possible to suspend the license, or to revoke it in case of sever and repeated violations".

6. In Lazio, besides the territorial laws, one should bear in mind the following local laws concerning advertising:

Regional Law of 05.08.2013 n. 5 "Rules for the prevention and treatment for pathological gambling": (a) Art. 7: "It is forbidden the advertising in every shape or form of the opening or

Lombardy [7]
Tuscany[8]
Abruzzo[9]
Puglia[10]

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of the existing cash prize gaming rooms. It is also forbidden the granting of institutional advertising slots for cash prize games"; (b) Art. 12: "The violation of the provisions, as provided for by article 4, comma 1 and article 7, shall be subject to a fine of a minimum of € 1,000.00 to a maximum of € 5,000.00".

7. In Lombardy, besides the territorial laws, one should bear in mind the following local laws concerning advertising:

Lombardy's Regional Law of 21.10.2013 n. 8 "Rules for the prevention and treatment for pathological gambling": (a) Art. 5, comma 6: ": "It is forbidden the advertising in every shape or form of the opening or of the existing legal gaming rooms that is in contrast with article 7, commas 4, 4-bis and 5 of the Legislative Decree 158/2012"; (b) "Non-compliance with the provisions as put forth by article 5, comma 6 results in a fine of a minimum of € 1,000.00 to a maximum of € 5,000.00".

8. In Tuscany, besides the territorial laws, one should bear in mind the following local laws concerning advertising:

(i) Tuscany's Regional Law of 18.10.2013 n. 57 "Rules for the prevention and treatment for pathological gambling": (a) Art. 5: "The advertising of cash prize games it is forbidden if it incites or exalts gambling and, in other cases, as set by article 7 of the Decree Law September 13, 2012 n. 158, converted into law and amended by Law November 8, 2012 n. 189"; (b) Art. 14, comma 3: "Those who violates the provisions of article 5 and 6 are subjected to the penalty system as put forth by article 7, comma 6 of the Legislative Decree 158/2012, converted into law by L. 189/2012".

(ii) Regional Regulations. The following Provisions laid down by "Prato's Municipality Rules on amusing and entertaining devices and for the functioning of gaming rooms" approved by the City Council of 30.07.2012 decision n. 61 are provided by way of examples: (a) Art. 12, comma 1: "It is forbidden the advertising in any shape or form of gambling products in the municipal area"; (b) Art. 12, comma 2: "It is forbidden the displaying of signs such as "Casino", "House of gambling" or similar expressions"; (c) Art. 14, comma 2: "Unless otherwise specified by law, the violation of these Rules will be met by a fine of minimum 25.00 (twenty-five, 00) euros to a maximum of 500.00 (five-hundred, 00) euros".

9. In Abruzzo, besides the territorial laws, one should bear in mind the following local laws concerning advertising:

Abruzzo's Regional Law of 29.10.2013 n. 40 "Rules for the prevention and treatment for pathological gambling": (a) Art. 3, comma 5: "It is forbidden the advertising in any shape or form of the opening or of the existing legal gaming rooms or the installation of legal gambling devices in commercial or public shops"; (b) Art. 4, comma 1: "The violation of provisions provided for by this law, without prejudice to the duty to report to the authorities in case of ascertained offence laid down by the penal code, is punishable by a fine of a minimum of € 1,000.00 to a maximum of € 5,000.00".

10. In Puglia, besides the territorial laws, one should bear in mind the following local laws

Friuli Venezia Giulia[11]
Autonomous Provinces of Trento and Bolzano[12]

Moving on to the next topic, it is important to note that the term time restrictions seems an understatement. Indeed, there are cases in which, out of 24 hours, the law allows to be open for only 5 hours per day (such in Naples). Moreover, what seems to be the most important issue is the macroscopic impact of the crowding out effect of the minimum distance laws.
Instead of regulating the allocation of legal gambling service over a specific area, the Territorial Law completely bans it.
Rather than identifying the restricted areas where the allocation of legal gambling is prohibited (as stated in the preamble to Territorial Law) it establishes instead an unlawful prohibitionism.
In other words, because of the extent of the ban and of the high number of sensible spots identified, it turns out that there are practically no available areas throughout the entire territory where legal gambling can be practiced.
In order to demonstrate the crowding out effect legal operators and trade

concerning advertising:

Puglia's Regional Law of 13.12.2013 n. 43 "Rules for the prevention and treatment for pathological gambling": (a) Art. 7, comma 7: "It is forbidden the advertising in any shape or form of the opening or of the existing gaming rooms"; (b) Art. 7, comma 8: "The non-compliance of the provisions provided for by comma 2, 3, 4, 5, 6 and 7 is punishable by a fine of a minimum of 6 thousand to a maximum of 10 thousand euros. The repetition of the violation is punishable by the temporary suspension of the business activities for a minimum of ten to a maximum of sixty days".

11. In Friuli Venezia Giulia, besides the territorial laws, one should bear in mind the following local laws concerning advertising:

Friuli Venezia Giulia's Regional Law of 14.02.2014 n. 1 "Rules for the prevention, treatment and tackling of gambling addiction and the problems and illness connected to it": (a) Art. 6, comma 8: "It is forbidden the advertising in any shape or form of the opening or of the existing gaming rooms contrary to article 7, comma 4, 4-bis and 5 of the Legislative Decree 158/2012; (b) Art. 9, comma 2: "The non-compliance with the prohibitions as set by article 6, comma 8, is punishable by a fine of a minimum of € 1,000.00 to a maximum of € 5,000.00".

12. In Autonomous Province of Trento and Bolzano, besides the territorial laws, one should bear in mind the following local laws concerning advertising:

Regional Law of 13.05.1992 n. 13 "Norms concerning public performances": (a) Art. 5-bis, comma 3: "It is forbidden the advertising in any shape or form of the opening or of the existing gaming and amusement rooms"; (b) Art. 12, comma 1: "Without prejudice to penal laws, every violation of the provisions as laid down by article 2, 5, 5-bis, 8 and 9 is punishable by a fine of a minimum of € 144.00 to a maximum of € 1,410.00".

associations have often asked experts to assess such phenomenon. The analysis demonstrates that, in 100% of the examined cases, the extent of the prohibition was almost a 100% of the territory in question. The case studies are the following:

1. Crowding out effect legal report Naples
2. Crowding out effect legal report Bari
3. Crowding out effect legal report Genova
4. Crowding out effect legal report Florence
5. Crowding out effect legal report Trento
6. Crowding out effect legal report Bolzano
7. Crowding out effect legal report Milan[13]
8. Crowding out effect legal report Vicenza
9. Crowding out effect legal report Vigevano
10. Crowding out effect legal report Sulmona
11. Crowding out effect legal report Lodi
12. Crowding out effect legal report Pioltello
13. Crowding out effect legal report San Michele
14. Crowding out effect legal report Riva del Garda
15. Crowding out effect legal report Mori
16. Crowding out effect legal report Mezzolombardo
17. Crowding out effect legal report Mezzocorona
18. Crowding out effect legal report Condino
19. Crowding out effect legal report Campitello di Fassa
20. Crowding out effect legal report Recco
21. Crowding out effect legal report Borgo Valsugana

For this reason, in the Part Two of this paper we provide a document in which the latest colour- based charts of the restricted areas subjected to such provisions. The analysis of the said chart points to the fact that the areas affected by interdiction correspond to essentially 100% of the territory in question. In this regard, I want to thank the Menato and Meneghetti Firm in Padua that, throughout all of these years, have promptly and efficiently carried out the fundamental and complicated technical assessments and authorized its publishing and, finally, I also want to thank the operators and the trade associations involved.

13. In the present case, the chart was taken by Municipality's website.

It has been often pointed out that the Territorial Law, instead of identifying some restricted areas (creating the so called "leopard skin's effect" because of the predominance of black spots on its fur), has blocked the distribution of legal gambling on the entire territory (creating the so called "panther's skin effect" because of its monochromatic fur).
Moreover, contrary to what has often been affirmed, the crowding out effect has not only impacted the new business but also and far most the existing ones. It is impossible to open new gaming rooms because the new ones will either be or most likely be in one of the many forbidden areas. Instead, for what concern the existing ones, they will soon be impacted by the crowding out effect due to the five-year license regime. This is already happening in Bolzano's County, where since 2011 the Territorial Law establishes a five-year license.
The same thing is going to happen soon to the existing supplying betting services business also because of their license regime, which are soon to be expired and are not going to be renewed, but will be banned as set out by Stability Law 2016.
In other words, despite the fact that the operators meet the standards required by law and have the right to open betting business (and have also paid the related fees), the authorizations will be rejected because their location is placed in a restricted area of. Moreover, they also do not have the possibility to move their business into another area because the ban is applicable essentially everywhere.
The expulsion of all legal gambling operators from the examined areas has important consequences on both the private sector and public interest.
Concerning the private sector, the expulsion of legal operators causes big losses in terms of profits and in terms of damages for the business itself, which in turn produces negative consequences on direct employment as well as on the entire industrial complex.
Moreover, for what concerns the public interest, notice that the exclusion of lawful operators creates a series of permanent effect on public safety, health and State revenues. This is true due to the following.
(i) The State revenues are directly and proportionally affected by betting and gaming taxes (for example the one-off tax withdrawal, concession fees and others) because such taxes are based on a certain percentage of the total volume of legal gambling.

(ii) Moreover, the State revenues are also affected by the fact that, because the operators can no longer carry out their activities they no longer generate profits. Therefore, the State loose income taxes.
(iii) It becomes clear now that all the time and space taken away from legal gambling, will be at the disposal of illegal gambling operators, which are able to meet the demand. Such phenomenon can be proven by simply reading the news.
(iv) Furthermore, contrary to legal gambling, illegal gambling leads to the spread of illegal games. Indeed, the second ones fall short of those mechanism put in place in order to curb the spreading of gambling disorders.
All these aspects can violate important legal principles imposed by the National Law, as in the examples following examples.
(i) The prohibitions of legal gambling on the examined areas must be assessed also in light of the violation of the statutory reserve that it produces. Indeed, the crowding out effect impedes the implementation of National Law which allows for the regulation and not the prohibition of gambling.
To overcome this problem, it is not by chance that the Balduzzi's Decree and the 2016 Stability Law call for an end of such phenomenon through to the actions of the Joint Session ("Conferenza Unificata") by proposing the deadline on April, the 30th 2016 [14].
(ii) The Territorial Law and the crowding out effect it determines are in conflict with the "subsidiarity principle" that allows the State, acting as legislator, and in compliance with the principle of fair cooperation (i) to exert its regulatory power even on a concurrent legislative competence, by defining the principles with which the local legislation has to comply with and (ii) to confer at the central level the administrative function when, according to parameter of dominance, it is a concurrent or residual regional competence.
The need of a "uniformed application" of the subsidiary principle, from the State's point of view, emerges (i) from various and concurrent elements of the legal system; (ii) from the Balduzzi's Decree and (iii) from Art. 14 of the Fiscal

14. 2016 Stability Law, Art. 1, paragraph 936 states: *"No later than April 30, 2016* at the Joint Session *as of art of the Legislative Decree, 28 August 1997, no. 281 are to be determined the characteristics of the public gaming rooms facilities, the parameter for their allocation on the area, in order to guarantee the highest levels of health protection, public order, and the player's best intentions and to prevent the access to minors. The agreement reached in the Joint Session are incorporated in the Ministry of Economic Affairs' Decree*".

Proxy Law 11 March 2014, no. 23; (iv) from the said 2016 Stability Law (art. 1, paragraph 936); (v) from Title V of the Italian Constitution; (vi) from the Bill 7 July 2015, no. 2000, submitted by PD (the Italian "Partito Democratico", Democratic Party) senators. Therefore, the above-mentioned "uniformed application" of the subsidiary principle arises both from regulatory measures and from measures that have not been approved yet.

(iii) It has even been noted that the Territorial Law and its crowding out effect are in conflict with Art. 17, paragraph III, last clause of the Constitution that states "In the case of concurrent legislative competences, the regulatory power is entitled to the Regions, except for the fixation of fundamental principles which is exclusively entitled to the State's legislation". In addition, it often recalled that settled case-law concerning the electromagnetic fields and the need of installing mobile telephone masts, affirm that local and territorial institutions are not allowed to exceed the limits set by National Law.

(iv) Moreover, the Constitution affirms that the legislative competences regarding the fixation of fundamental health services standards and the political and social rights, are exclusively entitled to the national authority, to ensure equal treatments throughout the entire Nation, as per Art. 117, paragraph 2, letter m).

(v) Last but not least, with reference to the violation of the principle of free enterprise as put forth by Art. 41 of the Constitution, the crowding out effect is due to the impossibility of implementing legal gambling services in the said areas. Such effect it is not a proportionate one and it is overdemanding because it causes the complete ceasing of this business activity. If, as it has been proven, the private individual can't provide for the legal gambling services anywhere in the said area, because of the Territorial Law, we are not only talking about a partial effort but about a "overdemanding sacrifice" and this leads to a complete state of imbalance towards the private citizen.

The Italian jurisprudence is starting to take into account such phenomenon. Among others, is worth recalling a recent decision, together with the pending lawsuit in examination by the Constitutional Court to declare the constitutional invalidity of Art. 7, Puglia's Provincial Law 13 December 2013, no. 43 about "Counter-action to the spread of gambling addiction", because in contrast with Art. 117, paragraph 2, letter h and Art. 117, paragraph 3 of the Italian Constitution.

With reference to two same decision of the Council of State (section III, 10

February 2016, no. 578 and no. 579), which provide for needs an adequate motivation and of an in-depth investigation during the preliminary phase. Both sentences declared unlawful the apodictic fixation of distance between sensible spots, when lacking of an appropriate investigation about the effective manifestation of gambling disorders over the territory, and when lacking an adequate evaluation of whether the established distance is proportionate and maintainable "as it doesn't impede new gambling stores' allocations and the availability of alternative locations, in view of possible transfer of active business", in relation to the huge amount of sensible spots identified.

As confirmed by the decision issued at first instance by the Emilia Romagna's Regional Administrative Court, which granted the appeal of a manager against the rules fixed by Bologna's Municipality, the Council of State observed that "in this case, despite the fact that the distance between the game halls is aimed at spacing out the places in which we can find the subjects needing for protection, and despite that the distance is based on a generally shared parameter, it lacks of a technical norm which actually measures the real effectiveness of said distance (...) Bologna's Municipality should have analyzed more in detail the incidence of gambling disorders throughout its own territory, according to it assess what is the adequate distance to abide by, in conjunction to the true dimension of the phenomenon it want to oppose, and verify if such distance is proportionate and maintainable, so that it could not impede the opening of new gaming rooms or and the possibility of finding an alternative locations in light of possible transfer of existing ones. It is possible to affirm that an abuse of discretion has occurred in this case. Nevertheless, the plaintiff Municipality has not made clear the reason for it, nor has it done in in the documents on the record".

In conclusion, it is possible to affirm that we should start from these case-law, together with the works of the Joined Session, to re-establish balance in this sector and provide the right regulations and the right protection for citizens and consumers, providing a definitive solution to the paradox of prohibitionist Regional Administrative Law (here recalled on the Part Three) and of prohibitionist Municipal Administrative Law (here recalled in the Part Four).

PART ONE

Collection of the contributions

Naples's prohibitions, risk of total dismissal of bets and shuting-down of legal gambling operators

GIOCO NEWS APRIL 2016

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 seems 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 allotters 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 are, 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 in on the outcome of the Joint Session.

Bolzano's prohibition stance is materializing with all its consequences

GIOCO NEWS MARCH 2016

WE have said it and written about it years ago; we have disclosed it, denounced it and accounted for in all of the arenas and in all of the numerous appeals initiated by the legal gambling operators. The anti-legal-gambling minimum distance regulation, child of the local law (municipalities, regions, as well as autonomous provinces), does not regulate the distribution of legal gambling, but establishes a real prohibition in clear contrast with the national law.

Quite often the replicas have argued that there was no prohibitionist effect because, according to such reconstructions, the law would apply only to new realities, and not to pre-existing ones. Indeed, void have been the complaints that we have raised when we were to say: (i) pre-existing business realities have been granted a five-year license by the municipalities; (ii) upon expiry of the five-year authorization, one must necessarily face the gauntlet of the verification of compliance with said minimum distance standards; (iii) such standards will not spare any of the areas of that territory; (iv) all of the requests for renewal of the existing business activities will be answered that the applicant is located in a forbidden area; (v) even in the event of wanting to relocate (with everything that would cost) the applicant would not even be granted a centimeter of new land without violating minimum distance laws.

And here it is, in simply five moves the "theorem of prohibition" is completed and legal gambling expelled. As of today, the case of Bolzano, which is one of the first areas in which prohibitionist minimum distances have been set up, makes it possible to say that the "theorem of prohibition" is not only completed, but also proven and well-functioning. Let's see why.

The law of the Province and the City of Bolzano, rather than regulating the territorial distribution of legal gambling (and therefore, rather than identifying restricted areas in which the distribution of legal gaming is prohibited, as

stated in the measures themselves), in practice impose an absolute prohibition over the entire area, and not only in certain locations.
In fact, because of the extent of the range of the ban (300 meters) and / or the number of sensitive spots identified, there is no street or area in Bolzano where lawful gambling can be practiced, as also assessed by experts. In particular, the percentage of municipal territory covered by the ban is found to be of 99.67%, even if one were to adopt a conservative assessment criteria.
This is essentially the case since 2012 (with retrofitting effects up to 2011). Facts demonstrates that in the past years no new legal gambling business has been allowed to open. Pre-existing operators were granted a five-year license, which essentially dates back to 1/1/2011.
Upon expiry of the five-year period, on December 31, 2015, the pre-existing realities are seeing procedure of disqualification being initiated against themselves for violating minimum distance law. This is necessarily affecting the 100% of the legitimate gaming operators who survived, because none of them can prove to be in a lawful area under the law. Therefore, everyone must shut-down its business activity, and no one is able to relocate to other parts of the city because basically every area falls under the ban.
What are the consequences of the "theorem of prohibition" already tangible in the territory of Bolzano? The answer is simple. Certainly, the fall of tax revenue all the way to zero is to be expected.
In fact, specific gambling taxes are due in percentage to legal gaming volumes, and income taxes are calculated on the results of closed business activity. Moreover, one must be concerned about the consolidation of the illegal gambling offer. It is now clear that all the time and space taken away to legal offer will be replaced by illegal one, which is able to satisfy a demand that exist no matter what. At the same time, it is clear that it is worth nothing trying to enact prohibiting measures for products which are already banned and widespread, such as so-called splot surrogates, because illegality originates primarily form prohibition). Last but not least, one must seriously assess the players' exposure to major risks of ludopathy, which local authorities hold dear. In fact, the spread of illegal gambling offer involves the making available of illegal gambling products. Illegal products are produced without rules and without supervision, and as such are capable of further aggravating the situation.
When it comes to the legislator's point of view, we can safely reach the conclusion that the national law is also against the prohibition of legal gambling. This

is not only due to the fact that legal gambling regulation has been carried out for quite some time, but also because of everything that has been said and done during these past years against the prohibitions, which was done in a very disorderly way, created by minimum distance law. Today we will mention only one of the most recent attempts: the 2016 Budget Law, which provides for regulatory action to be shared with the territory that must be orderly, legitimate, homogeneous, and above all true (in the sense that is has to regulate and not prohibit) through the instrument of the Joint Conference, which we already discussed on a separate occasion.

The jurisprudence is showing signs of impatience against the problem of prohibition created by minimum distance measure that have been repeatedly denounced. Consider the Tar of Puglia's Ordinance of 22/7/2015, which states that the question of constitutionality of the Regional Law n. 43/2013 and its minimum distance is not manifestly unfounded. Moreover, as mentioned in other occasion, the Council of State in two separate orders dated 01.12.2015, number 5332/2015 and 5333/2015 has *"Consider the arguments put forward by the appellant worthy of investigated in substance, with particular reference to the question of constitutional legitimacy of the regional law of Liguria 2012, no. 17; Given that, at present, the arguments put forward by the first judge in relation to the comparison of the damage projected to the respective parties are to be shared*". The same conclusion was reached again by the Council of State, always on the 1/12/2015, but by ordinance number 5337/2015 this time addressing the Tar of Tuscany in regard to the minimum distance set by the Tuscan Regional Law n. 57 of 2013. Even the Bolzano Administrative Court, after many pronouncements that are not sensitive to the crowding-out effect denounced, seems to be giving a glimpse of hope thanks to Ordinance n. 196/2015 of 16.12.2015, with which it was decided to suspend the effectiveness of the measure by which the Province had rejected the request for extension of the license, as per ex art. 88 TULPS submitted by the applicant in respect to the December 31st, 2015 deadline. And in fact, on that occasion the judge, not excluding the merits of the action, considered the actual existence of the injury alleged by the claimant *"taking into account that the licenses (…) are valid ONLY until December 31st, 2015").*

So, one should wonder why delaying solving the problem?

Let's tidy up

Even the State-Regions Conference action as provided by the 2016 budget law is against the crowding out effect on legal gambling, but it must be comprehensive and must be enacted on time

Among other things, the 2016 Budget Law calls for the ritualization of the concerted action procedure between State and Regions in order to tackle the growing problem of uncoordinated and fragmented local regulations targeting legal gambling.

Notably, the procedure under consideration is the one as set by comma 936, which states "By April 30, 2016, during the Joint Session, are to be defined the characteristics of public gaming facilities, as well as criteria for its distribution and territorial allocation, with the aim of ensuring the highest levels of protection for health, public order, and the player's bona fides, and to prevent minors from accessing gambling. The measures achieved during the Joint Session are transposed by Decree of the Ministry of Economics and Finance, having consulted the relevant Parliamentary Committees.

The said Joint Session is provided for by the above-mentioned article 8 of the Legislative Decree 28 August 1997, n. 281 which states *"1. The State-City and local autonomous body Joint Session is unified with the State-Regions Joint Session in case of matters and task of shared interest for the Regions, Counties, Municipalities and Consortium of Mountain Municipalities. 2. The State-City and local autonomous body Joint Session is chaired by the Prime Minister or, if he delegates, by the Ministry of Interior or the Ministry of Regional Affairs on the basis of the subject of the agena; the Ministry of Treasury, of Budget and Economic Planning, the Ministry of Finance, the Ministry of Public Works, the Ministry of Health, the President of the National Association of Italian Municipalities ("Associazione Nazionale dei Comuni d'Italia – ANCI), the President of the Union of Italian Counties (Unione Province d'Italia – UPI), the President of the National Union of Municipalities, Communities and Mountain Entities (Unione Nazionale Comuni, Comunità ed Enti Montani – UNCEM) are also members of said session. Moreover, other members are fourteen Mayors*

designated by the ANCI, and six County Presidents designated by the UPI. Of the fourteen Mayors above-mentioned, five of them represent those cities as per article 17 of law n. 142, 8 June 1990. Members of government, representative of national and local administration or public bodies can be invited to participate at the meeting. 3. The State-City and local autonomous body Joint Session is held at least every three months, and every time the president deems it necessary, or if the president of the ANCI, IPI or UNCEM call for a meeting. 4. The Joint Session as set by comma 1 is summoned by the Prime Minister. The sessions are chaired by the Prime Minister or, if he delegates, by the Ministry of Regional Affairs, or in case such office is not yet been awarded, by the Ministry of Interior".

This passage seems to give a glimpse of hope for the reorganization of the so called territorial issue.

Undoubtedly, such initiative represents yet another attempt of the legislator to try to limit at a national level the possible proliferation of regulation enacted by local administration, either they are Regions or Autonomous Counties, or Autonomous Municipalities. Further attempt from local administrations to expand their administrative actions mainly consist of restrictive regulations concerning the distribution and territorial allocation of legal gambling: (i) in terms of minimum distances (which are so broad that result in a radical crowding out effect); (ii) in terms of time restrictions (de facto making it too economically inconvenient for business to be open); (iii) in terms of advertising bans (practically hindering any form of communication).

In this regard, a first comment can be made. Legal gambling operator expects an orderly regulatory regime not only in respect to the spatial dimension (to limit the crowding out effect of the minimum distances regulations effects), but also concerning the temporal (in order to reduce time restrictions regulations) and communication dimension (with the aim of avoiding total advertising bans).

Another aspect of this issue is the importance of respecting the April 30, 2016 deadline, as set by the legislator.

The preoccupation lies on the fact that it is hard not to bear in mind previous attempts of the legislator, always at the national level, to ensure that rights of both the citizens and operators are respected. As of today and despite the "Balducci Decree", such effort seems to not the be fully achieved. In particular, article 7 comma 10, provides the following *"The Custom and Monopoly Agency, taken into consideration public interests of this sectors, on the basis of certain*

standards, among which there are distance from primary and secondary educational facilities, healthcare and hospitals facilities, place of worships, socio-recreational and sports centers, standards which are defined with Decree of the Ministry of Economics and Finance, in agreement with the Ministry of Health, after having reached an agreement during the Joint Session, as per article 8 of the Legislative Decree 28 August 1997, n. 281 as amended, to be adopted within one hundred and twenty from the day of entry into force of the present decree, provides for the planning of a gradual reallocation of physical public gaming facilities in which gambling is practiced through equipment as per article 110 comma 6, letter a), of the Consolidated Law as for the Royal Decree n. 773 of 1931 as amended, which are in the proximity of said places. Such planning concerns the licenses awarded after the date of entry into force of conversion law of the present decree and apply to every new license, depending on the location of primary and secondary educational facilities, healthcare and hospitals facilities, and existing places of worship. The results of the audit as per article 9, as well as every other qualifying information acquired in the meantime, excluding proposals made by Municipalities or their regional or national representatives, are to be taken into account when planning."
Well, the news enables us to clarify that many years after, upon expiry of the above-mentioned time limit of one hundred and twenty days, no planning for the reallocation of license which were not awarded at the time has been put forth.
The focus is on the April 30, 2016 deadline, as set by the Budget Law, which calls for defining the characteristics for public gaming facilities, as well as their distribution and territorial allocation. Delaying or non-acting could be fatal.
The expectations are high, due to the growing restricted regulations concerning the territorial allocation of gambling, such as the ones enacted by the Naples City Council which results in a total prohibition of gambling.
The reason why shedding light on this matter is a top priority is due to the fact that, in effect, the Budget Law itself set the rules for the allocation of new bookmakers as a replacement of the expiring ones. When deciding whether to engage in this economic activity or not, the operators who wish to do so certainly face a series of question when dealing with their business plan.

The legislator has distanced itself

Even the legislator is more and more convinced that current legal gambling regulations cannot be so disorganized nor can they result in prohibitions

GIOCO NEWS JANUARY 2016

A few days ago, the Council of State released a series of ordinances that, by accepting a legal gambling operator's appeal and in a certain way of all its sector, has de facto charged Liguria's Regional Administrative Court (TAR) with the urgent task of debating whether the minimum distance as set by Liguria's Regional Law of 2012 n. 17 (see ordinance number 5332/2015 and 5333/2015 of 01/12/2015), is constitutional. Few hours after releasing said ordinances, the Council of State was addressing Tuscany's Regional Administrative Court with regards to Tuscany's Regional Law of 2013 n. 57 (see ordinance 53337/2015 of 01/12/2015). Said ordinances are in line with the spirit of a referral to the Constitutional Court concerning the question of legitimacy of Puglia's minimum distance, as provider for by Puglia's Regional Law of 2013 number 43 (see ordinance 2529/2015 of 22/07/2015). If it is true that the Justice Department is starting to signal that they acknowledge the illegitimacy of the prohibitionist effect of the existing regulations, it is also true that the legislator has long been arguing about it as well.

It is a known fact that the legislator has clearly signaled that there is a need for unified handling of legal gambling phenomenon. The reasons for such are the following.

First of all, there are a series of principles, expressed with regards to 2014 Fiscal Enabling Act (Delega Fiscale), whose aim is to: (a) Unify the legislation concerning legal gambling at a national level; (b) regulate and not crowd out legal gambling business because of the need to safeguard bona fide, public order and security; (c) balance state revenues with local ones and with those related to public health, prevent money-laundering, guarantee stable gambling tax revenues (article 14 of Law n. 23 of 11/03/2014).

Verily, article 14 of the 2014 Fiscal Enabling Act provides for the rearrange-

ment of the existing public gambling rules creating a Legal Gambling Code, with the aim of regulating the matter in a unified and uniform way at the national level, in accordance with certain principles, such as *"introduce and guarantee the application of transparent and uniformed laws throughout the entire national territory in regard to gambling supply permit, authorizations and monitoring, guaranteeing binding forms of involvement of the relevant municipality, making sure to provide a minimum distances form sensible locations valid throughout the entire country, the dislocation of gaming room and of shops in which the core business is sport's bets, as well as in the field of eligible equipment for legal gambling as per article 10 comma 6 letter a) and b(of the Consolidated Law on Public Security (TULPS)"*.

Moreover, it calls for *"binding forms of participation of the relevant municipality"*, and not of other autonomous body, when establishing rules concerning the distribution of gambling.

All of it must be in accordance with *"the State's right to define the necessary rules for public order and security, assuring the safeguarding of the regulatory framework already issued at the local level that follow the principles of the present letter"*.

Second of all, it is important to recall the principles laid down during the implementation phase of the enabling act, as reflected in the Draft Legislation currently under examine (see Draft Legislation, Senate Deed number 2000/2015).

In particular, article 6, comma 1 and 2 of said Draft Legislation provide the following: *"1. The organization and the exercise of public gambling (…) is reserved to the State. Moreover, the identification, the approval and the gambling activities framework (…) are also reserved to the State. The organization and the exercise of said activities as per the first paragraph are entrusted to the Ministry of Economics and Finances, which exerts them by mean of an Agency, which in turn can carry out the task directly or by concessions contracts, of natural or legal persons, which are proved to be sufficiently suitable. In case latter case, the fees and the payments methods are agreed upon in concession contract. In the exercise of their normative and administrative power, the Regions and the Municipalities comply with the provision of the present law which constitute national coordination rules in the matter of gambling, refrain from introducing measures or from taking action which would jeopardize the unity of the national regulatory framework which are the primary source in the matter of public gambling"*.

Moreover, article 13, whose heading provides as follow *"Territorial allocation of physical gambling offer"*, of the same law affirms that: *"1. During the Joint Conference the State, the Regions and the local authorities stipulate measures aimed at the*

distributing gaming halls that provide gambling activities (…) Such measures must ensure the creation of a standardized gambling licenses valid at the national and local, as well as their assets."

Nevertheless, Chapter VIII *"Pathological gambling combat measures"*, article 30 comma 1, of the same law states that *"1. A permanent Board of representatives of the government, regions and local authorities, representatives of organized agencies of the gambling sector, firstly such as licensees and gambling tech industries ones, as well as families and youth associations representatives which are registered in the appropriate list of the committee as per article 4, with the aim of identifying and constantly updating of measures, which are also in compliance with EU law, whose target is to fight against gambling websites ".com"*.

Moreover, it is no exception that, always in the case of said Draft Legislation, in order to clear up any doubt article 1 crystallizes the principle that must be applied upon entry into force of the current implementation of the enabling act: *"(…) all of the possible regional or municipal measures, that can influence public gambling in any shape or form, must be in compliance with the present code. The Regions and the Municipalities that, upon the entry into force of this law, have enacted measures which are not in compliance or are in contrast with those of this code will promote their changes aiming at making them in line with the present law."*

Finally, as proof of the intentions of legislator in charge of implementing the enabling act, in the attached declaration of the same draft legislation, he expressly states *"a transparent and unified application of the rules on the entire country is guaranteed (…) through an adequate form of participation of municipalities during the authorization and planning process concerning the relocation of gaming rooms (…) [and of] equipment"*.

Besides, we already had the chance to recall that importance of the principles enshrined in the unfolding reform of Title V part II of the Constitution, which provides for the reduction of competence for the national level in the field of health, and changes to article 17 of the Constitution, which delineates the power of the State to revoke shared competences in special cases such as the one und examination (art. 24 and following of the Legislative Decree n. 1429 approved by the Senate August 8, 2014).

In particular, article 117 of the Constitution, in said form, gives the State exclusive legislative power in case of general norms for the safeguarding of health, and grants the States the ability to *"intervene in matters or functions not reserved to its exclusive legislation, when in need of safeguarding the unity of the legal*

or economic system of the Republic, or when necessary to the realization of programs or economic-social reforms of national relevance."

The above-mentioned reform de facto centralizes the exclusive competence in the matter of health and, in turn, all the regional and/or county measures enacted based on concurrent competences will be evaluated considering the constitutional reform.

The need for a unified code in the matter of health, as well as the need for a very extensive inquiry at the national level, with the aim of ensuring the efficacy of the measures adopted in the field of gambling compared to their purpose, drive the legislator in the direction of advocating for itself such exclusive competence, preventing local administrations from enacting inconsistent and ineffective laws.

In other words, what seems to be the case is the growing realization of the fact that, if on the one hand at the local level there is a certain level of legislative power in the field of gambling, on the other said legislation should not be uncoordinated nor result in a total prohibition of the phenomenon because it is in contrasts the national law. Therefore, time restrictions, minimum distances or geographical restrictions which result in crowding out legal gambling, should not be implemented.

Let's rally up

The constitutional court will decide if minimum distances imposed at the local level are compatible with the Balduzzi Decree

GIOCO NEWS DECEMBER 2015

It is acknowledged that, because of the way they are designed (no proportionality and with its total disqualifying effects), territorial restrictions to legal gambling distribution – whether in terms of time restrictions or in terms of minimum distance – are an illegal threat to the entire sector, threat that even the legal system is starting to recognize.

The legal system itself has realized the abovementioned and is willing to remove, limit or to at least redirect the prohibitionist, populist and untechnical drift of local regulations. This emerges from the national laws that deal with the protection of minors, in the so called Balduzzi Decree, in the ongoing Title V reform of the Constitution, and also in the parliamentary / governmental activities which all merged in the famous gambling reform draft law. Today we take into consideration the fact that Puglia's Regional Administrative Court (TAR) has referred to the Constitutional Court Puglia's Regional Law number 43/2013 which limits legal gambling, for the noted non-manifested unfounded questions of constitutional illegitimacy, for incompatibility with the local law with the abovementioned Balduzzi Decree.

In particular, Puglia's Regional Administrative Court with ordinance 22/7/2015 has consider *"preliminary, relevant and non-manifestly unfounded (…) the question of constitutionality of art. 7 of the Regional Law 43/2013, given that the application of the same impedes the petitioners to obtain his good, namely the relocation of his legal gambling business to the new location of Via Olimpiadi, since this is placed 500 meters from a school."*

This is fundamental because Puglia's Law *"runs contrary with (…) [the so called Balduzzi Decree, given that] while the regional provision under examination provided for an immediate entry into force of the ban, state's law defers the entry into force of new licenses to after the planning that must be carried out in line with the abovementioned state provisions, in the absence of which, there would not be any impediments to the*

relocation of the business in proximity of sensitive locations". In effect, the regional norms which allows for uncontrolled and enormous minimum distances, obviously disregarding the intention behind and the content of the Balduzzi Decree. There are numerous reasons that allow us to reach such conclusion.

First of all, the national legislator that dealt with the Balduzzi Decree is moving in the direction of pursuing the objective of regulating the "distances" in order to be: (i) thoughtful throughout the country – therefore not for a municipality, county or regional portion of the territory -; (ii) designed at the central level through the government – therefore not at the local level -. The ratio of such law can be found in the need of having a homogenous and effective regulatory framework throughout the entire state, avoiding the creation of inconsistencies.

Second, the national legislator that dealt with the Balduzzi Decree, expressly provides for the participation of local and territorial institutions at the making of the rules for "distances" during the Joint Conference, as per article 8 of the Legislative Decree 28 August 1997, n. 281. Therefore, not by attributing autonomous and independent legislative/ regulatory competences. In this case, the ratio behind the law can be found in the fact that, it is true that there are legitimate needs that only mayors and local governors can better deal with, however it is sufficient to consider them during the consultation phase, in line with needs of unity of treatment.

Third, the national legislator that dealt with the Balduzzi Decree is clearly and expressly moving in the direction of applying "distances" regulations only in case of licenses yet to be awarded at the time of the entry into force of said decree. Therefore, these rules will not apply to licenses that have already been assigned, and the existing reality. The ratio has multiple origins: (a) the existing legal gambling supply covers the entire territory and this helps in the fight against organized crime; (b) the existing business have already been selected and contracted by the State in order to ensure legal gambling distribution, which provides for a specific set of rules of engagement, tax revenues both already payed or not: changing the rules of engagement along the way can create more problems rather than solving them. Targeting an entire industry – the legal gambling one – in the midst of its activity for recover investments can have repercussion, not only at the industrial level but at an occupational one as well.

Fourth, the national legislator's intention is to "regulate". Therefore, not to

"prohibit" legal gambling distribution throughout the country. This might seem like a small detail, however it is incredibly important and we will deal with it in the next paragraph. If we were to apply regional or municipal anti-slot laws the from a to z, de facto it would be impossible to offer legal gambling. This is true because there are too many sensible locations listed or the range of prohibition of 500 or 300 meters imposed is too much: in practice, anti-slot rules paints themselves as a regulatory attempt, but in reality, they ban gambling.

Moreover, Puglia's Regional Administrative Court specifies that *"It seems to be (…) evident that the state laws (…) intended to provide for preventive anti-pathological gambling measures with the aim of protecting health, a right that, on the base of art. 117 comma 3 of the Const., has its foundation in the national legislation, giving to the regions the ability to concur at the making of the rules in line with the fundamental principles of national legislation. In the present case, art. 7 R.L 43/2013 [i.e. the minimum distances imposed by Puglia's law], in ordering the immediate entry into force of norms concerning distances from sensitive locations, contradicts art. 7 c.10 L.D. 158/2012, which instead demands the application of the new law when dealing with the planning process assigned therein (planning process which allows for the participation of different subjects and that the R.L completely omits), thus violating " a fundamental principle established by the state in order to safeguard health" (…). If it is true that "the protection of health" is a Regional concurrent competence, therefore they can enact rules that are in line with state law and fundamental principles, it is also true that the ability to imposed uniformed standards of safeguarding throughout the county is reserved to the State, without prejudice to the ability of the Regions to establish higher standards of protection in order to reach goals connected to their competences (see TAR Lombardi 4.4.2012 n. 1006;TAR Puglia 7.12.2012 n. 2100; Const. Court March 5, 2009 n. 61; Const. Court March 14, 2008 n. 62)".* In the same ordinance reads *"In a material respect, while the national law prescribes that the progressive reallocation only relates to equipment (…) as per art. 7 of the R.L 43/2013 provides that the restrictions assigned therein apply to "all of the gaming equipment as per article 110, comma 6 of the Consolidated Law on Public Security, issued with Royal Decree June 18, 1931 n. 773, as well as every other type cash prize game offer subjected to the existing norms";".*

Apart from the aforementioned, it is important to add that the minimum distances imposed are so broad and the sensible locations (some of which are questionable) are so many that it basically created a complete ban, objective

that differs from the initial purpose of the regulatory action.
This topic will be dealt with by the Constitutional Court and they will release a ruling, unless they will reach a comprehensive legislative framework that will ensure the proper functioning of the system, as well as finally being a legitimate one in the penalty section.

Who benefits from stricting the rule of law

A series of limitations that only affect legal gambling are spreading: such measures are fit for the primary purpose of limiting pathological gambling

GIOCO NEWS NOVEMBER 2015

In a series of talks concerning the assessment of new time restrictions measures, it has been pointed out that there are two important things that the jurisprudence (though timidly) is willing to take into account. Namely the lack of proportionality, and the systemic omission of an assessment of whether pathological gambling actually derives from legal gambling rather than from illegal one.

As of today, we want to highlight yet another major flaw of time restrictions initiatives imposed by local governments. We are talking about a weakness that, it must be said, the jurisprudence is still trying to avoid tackling, however we believe that such is crucial to the debate, especially because it is allows for an easy and transparent way to base someone's evaluation based on technical, scientific and cultural evidence rather than on personal bias. Namely, testing the suitability/ appropriateness/ efficacy of the regulations whose aim is to combat pathological gambling.

The total inadequacy of time restrictions regulations and the consequent closing of legal gambling shops vis-à-vis the targeted goal results from the scientific assessment, which could be carried out by any pathological gambling expert charged with the investigation, of what are the actual effects of said regulations in terms of health of subject affected by pathological gambling.

The results of such an investigation will appear shocking only to outsiders: in realty, and contrary to what assumed by local administrations, time restrictions would not only be unfit to the scope, but would be described as an indirect cause of the strengthening of such phenomenon.

Specifically, it is to be noted that if it is true that these regulations aim at as-

sisting pathological gamblers, it is also true that evidence show that they are totally ineffective: a person who needs a product has no problem adapting to a different schedule, and would not have problems at driving to a neighboring municipality with a preferable opening schedule.
It should be also noted that, what drives decision making and the psychology of dependency are both an obsessive-compulsive behavior that can be dealt with appropriate mechanism aim at tackling such issue. Moreover, it is very hard to determine in a scientific way who should be consider a vulnerable subject. In certain cases, young people and elders are considers to be so, while other studies suggest that it should be the 32/55 age group.
The truth is that time restrictions are more of a linear cost-cutting than sound management. What seems to be the case is that these types of measures meet media needs rather than a genuine, wise and efficient attempt to restrain such phenomenon. Someone could argue that it is a way of obtaining votes instead of improving health.
Another technical/ scientific comment is that even if such provisions doesn't do good, it is also not a neutral one. Indeed, an excessive restrictive measure (as in most cases) basically corresponds to prohibition. A response to the prohibition imposed at the local level (something that the legislator has abandoned years ago) corresponds to an increase in the illegal gambling supply. No one would argue against the fact that illegal gambling supply does not offer the same levels of protection, security, legality and moderation as legal one.
The local time restrictions ordinances do not offer any study of the actual efficacy of it.
From a legal standpoint, these ordinances cannot be limited to the mere goal of safeguarding of an interest. Just as an evaluation taken in a judicial forum must determine if an assessment was conducted during the pre-trial phase. All of this in light of a general principle of proportionality, in compliance with the adequacy of the means utilized in regard to the targeted goal, as well as coherence, rationality and proportionality of the circumstances and the content of the act.
We already had the chance to recall a passage which expresses a wise jurisprudence *"the previous authority, even in case of the wide use of discretionary powers, when issuing a measure, in regard to its factual substance, is always bounded by principles of utility and adequacy of the means used to achieve its goal, as well as the principle of proportionality and coherence between the actual circumstances and the content of the*

act and of the minor sacrifice as possible for private recipient of the relevant measures that negatively impacts their judicial sphere (see Council of State 23.08.2000, n. 4568). Generally speaking, for these reasons … it must be backed by adequate and suitable opinions of technical organza, in order to balance the primary and fundamental public interests … with the interests of the private to carry out its economic activities in line with the principle of free enterprise" (see ex multis, TAR Veneto, section III, January 2, 2009, n. 6).

The investigation apropos of the question of legitimacy of time restrictions regulations in regards to its objectives is a must, not only in respect to legal gambling operator's interests, but also vis-à-vis the safeguarding a certain general interest, such as: (i) ensuring and effective and efficient measures for vulnerable subject (whom can really be defined as such) and for those people affected by pathological gambling; (ii) not to encourage "parallel" gambling offer in those areas in which legal gambling has been restricted; (iii) limit the distortive effects of "parallel access" to gambling, which are not subjected to State's authority, on vulnerable subjects and those who are affected by pathological gambling; (v) minimize the effects of the downsizing of legal gambling personnel, not because of mere economic losses but due to the risk of business shutdown by restrictions imposed.

All of the aforesaid holds true, unless they can convince us that by imposing time restrictions on bakeries, on public interest grounds, will reduce the number of people affected by diabase; or unless they can proof that by completely shutting down bakeries they can once and for all eliminate said disease, always on the base of public interest; or except if they can guarantee that in such case we would not experience the opening of a large number of stands that offer goods which, as some would say, do not possess the legal health requirements.

The (un)just way

Time restrictions imposed only on legal gambling: is this measure fit for curbing pathological gambling?

GIOCO NEWS OCTOBER 2015

In a series of talks concerning the assessment of new time restrictions measures, it has been pointed out that there are two important things that the jurisprudence (though timidly) is willing to take into account. Namely the lack of proportionality, and the systemic omission of an assessment of whether pathological gambling actually derives from legal gambling rather than from illegal one.

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Specifically, it is to be noted that if it is true that these regulations aim at assisting pathological gamblers, it is also true that evidence show that they are totally ineffective: a person who needs a product has no problem adapting to a different schedule, and would not have problems at driving to a neighboring

municipality with a preferable opening schedule.
It should be also noted that, what drives decision making and the psychology of dependency are both an obsessive-compulsive behavior that can be dealt with appropriate mechanism aim at tackling such issue. Moreover, it is very hard to determine in a scientific way who should be consider a vulnerable subject. In certain cases, young people and elders are considers to be so, while other studies suggest that it should be the 32/55 age group.
The truth is that time restrictions are more of a linear cost-cutting than sound management. What seems to be the case is that these types of measures meet media needs rather than a genuine, wise and efficient attempt to restrain such phenomenon. Someone could argue that it is a way of obtaining votes instead of improving health.
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suitable opinions of technical organza, in order to balance the primary and fundamental public interests … with the interests of the private to carry out its economic activities in line with the principle of free enterprise" (see ex multis, TAR Veneto, section III, January 2, 2009, n. 6).

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Out of time

Are the time restrictions imposed at the local level proportionate? the council of state is looking at daily opening hours granted to legal operators. – regarding the matter of time restrictions, the council of state, which recalls the constitutional court, is silent on the eligibility of the measure and on the distinction between legal and illegal gambling or on the incompatibility with standards of service, but offers an important evaluation of the question of proportionality of the limits imposed on legal operators

GIOCO NEWS SEPTEMBER 2015

In light of ruling n. 3778/2015 of August 1, 2015, the Council of State has concluded a pending case regarding a 2011 appeal against time restrictions on gambling machines enacted by Salerno's Municipality. The Court rejected the appeal which essentially argued against the municipality's lack of competence in the field of gambling.

The Court reached such a verdict by extensively recalling the reasoning of the famous Constitutional Court ruling 220/2014, which was summoned in first instance for the same proceeding. Furthermore, in a brief but significant passage the Council of State offers useful comments on the question of eligibility and proportionality of time restricting measures.

First of all, diverse and specific aspects relating to time restricting measures, which are currently under the examination of the various Regional Administrative Courts (TAR), are not taken into consideration. Particularly, among other important issues that are not dealt with are the following: (i) the lack of assessment of whether the harm inflicted to protected interests (pathological gambling or, as in the case of Salerno, traffic) originates from legal gambling rather than from an uncontrolled expansion of illegal gambling offer; (ii) the suitability of the measures in regards to the targeted scope (from a scientific prospective the reduction of daily opening hours are unfit for halting pathological gambling); (iii) the incompatibility of switching-off gambling devices with the norm that imposes constant monitoring of machines and reading

service standards, which could be compromised precisely because of switching-off policies. We will further examine these claims in another occasion.
A second idea, which is today's main topic, is that upon the request of the operator the Council of State seems to imply that it is correct to carry out an adequacy and proportionality assessment of the limits imposed by Salerno's regulation. Furthermore, the court focused on the burden of time restrictions, so much so that they counted both the daily closing and remaining hours during which gambling shops can operate (the legal system qualifies all of the remaining hours out of the total amount of daily working hours, as "working" ones).
More in detail, the following paragraph clarifies the abovementioned: *"(…) the formulation of opening hours of legal gambling shops, or time-slots for the switching-on and off of gaming machines (…) seems to be reasonable criteria, sufficiently justified for the application of the principle of proportionality, principle which the appellant claims to be violated, given that even during the school year 14 daily hours are guaranteed, while during the holidays and the rest of the year the total number of daily opening hours reaches 17 a day, data that is hard to reconcile with the idea of being economically penalized, on the contrary the point into the direction of a reasonable balance of different interests that are also protected by the Constitution."*
It is important to note that, when specifying the amount of daily opening hours of gaming rooms (14 during the school years and 17 during the holidays), the ruling does not take into account that said regulation actually provided for a smaller number of daily opening hours for AWP (9 hours circa during the school year), which would otherwise be deemed unproportionate, in line with fact that the Court declare double the hours as fit.
Having said that, and having consider the matter in general terms, more recent regulations adopted by other municipalities, which have also been appealed, allow for half of the number of hours as set by Salerno's Municipality, amount that the Council of State declared fit and proportionate.
Indeed, there are cases in which the regulation imposes the closing/non-functioning of business activities for 8 hours a day, in contrast to a regular 16 hours working hours a day. This means that what the Council of State has declared as a "guaranteed opening" is not of 14 or 17 hours, but of only 8 hours per day.
On many occasion legal gambling operators have affirmed that in this scenario the following has been damaged: (i) specific interests (dramatic decrease – and not a mere reduction – of profits, proportionate to the amount of gambling

activities); as well as (ii) on the one hand general interests such as public order and safety (the closing of legal gambling activities favors the spread of illegal ones), and on the other tax revenues (radical decrease – and not a mere reduction – of state and administration's revenues, proportionate to the amount of gambling activities).

For what concerns specific interests, every hour that a shop is closed directly, negatively and drastically affects the economic sphere of legal gambling operators, because their revenue is commensurate to the volume of gaming. Vice versa, most of the costs are fixed (for example the cost of electronic network, salaries, investments, rent). Therefore, this hypothesis is necessarily economically (costs exceed revenues not in a temporary way, but as a business model) and financially (there isn't and there will not be enough inflow of money for paying fixed expenditures) unsustainable. Such imbalances are not merely temporary, rather it become the business model because they are the consequence of permanent regulations.

Apropos of the principle of proportionality, this is not a mere reduction of both state and business revenues, as someone has argued, given that the daily opening hours is of only 8 hours per day, thus 50% of a normal working day, and 50% of what the Council of State has argued was a fit number of hours for the city of Salerno (as already said 14/17 hours).

The same could be said in many other cases, regulations which have also been appealed. It would be like asking/imposing a business to work from January to June, while closing from July to December, yet facing costs for the whole year. The unproportionate reduction of revenues is also unsustainable if one bears in mind all the investments made before the entry in force of these regulations, and the significant amount of taxes already paid in light of the Budget Law (Law 190/2014, article 1, comma 649, and Decree ADM of January 15, 2015).

It is a known fact that the principle of proportionality is part and parcel of the general administrative sphere. Said principle implies that measures aimed at safeguarding public interests are illegitimate if they demand an excessive sacrifice compared to interests deemed to be protected, protection that could be exerted via the adoption of an alternative measures. Notably, the jurisprudence has declared that *"the authority (…) is always bound to respect the principles of (…) proportionality and coherence among the factual circumstances and the content of the act, and the principle of the minor sacrifice as possible for private recipient of the relevant regulation which negatively impacts their judicial sphere"* (see Council of

State, 23.08.2000, n. 4568).
Therefore, the assessment of such an equilibrium should and must be carried out during the judicial phase, with proper foresight, precision, and without prejudice, because it is a vital for the survival of legal gambling business, thus of specific and general interests.
For what concerns the regulations currently appealed, the shutting-down imposed is certainly not proportionate and it does not aim at finding a way to imposed a minor sacrifice as possible for a private recipient, and imposes the amount of 8 daily opening hours: we are dealing with a mutilation of the economic initiatives, so much so that it prohibits them from working half of the lawful time.
The hope is that these findings will be taken into consideration even before the entry into force of the government draft law in implementing the fiscal enabling act, which among others clearly states that: *"(i) in exercising its powers (…), the Regions and the Municipalities comply with the provisions of the present law, which constitutes a national coordinating measures in the field of gambling, refraining from enacting laws or taking actions that nullify the unity of the national regulatory framework which is primary source in the field of gambling; (ii) "during the Joint Session the State, the Regions and the local authorities determine the arrangements in the field of territorial distribution of gaming halls which offer legal gambling (…). These arrangements must, in every case, result in ensuring the possibility of having a uniform licenses regime at the national level and throughout the country, as well as safeguarding assets"*.

Emilia Romagna's Tar judgement: so, it's true! The rules of the territory are not in compliance with the national framework of the Balduzzi Decree!

PRESSGIOCHI ONLINE MAY 5, 2015

ON April 27, 2015, the judgement n. 407/2015 was issued from the TAR of Emilia Romagna in acceptance of the appeal introduced from a gaming operator against the measure of the Headquarters Police of Bologna, with which the release of a license was rejected according to art. 88 TULPS for failed compliance of the minimum distance regulations imposed by the urban Police rules adopted from the administration of the city of Bologna.

The TAR has lifted the illegality in the aforementioned Regulation in the section where the minimum distance of 1000 meters from sensitive places therein indicated is imposed on gaming halls. Such a forecast, for the judges, would be free of the necessary presupposition of art. 7 D.L. 158/2012, also confirmed in RL 5/2013 of the region Emilia Romagna itself, for the preventive planning of the location of the gaming halls near institutional and health structured, hospital, and places of worship: in absence of such planning the measure is devoid of any national and regional legislative coverage.

The passage is very clear where it is specified that "In light of such primary regulations, the law has in effect highlighted that, coherently with the needs protected – the same as those of the entire national territory –, the instruments to contrast gambling addiction must find their basic discipline at the central level and be included in the system of national planning, the limits to which the local agencies will operate within, with exception where the power of mayors allows the adoption of urgent ordinances in the case of situations of effective emergency (v. TAR Veneto, Sec. III, 16 April 2013 n. 578).

As "protection of health" matters are the competence of the competing legislative of the Regions, the latter can in reality provide and dictate rules of sector in consistency with state discipline and with its concerning fundamental principles, as the region Emilia Romagna has done with the law n. 5 of 2013 (…)); a norm, the latter, that has induced, in a previous case, the Court to take over in the absence of the aforementioned programming, the adoption of standards in matters concerning each commune both free of the necessary presupposition (v. Sec. II 20 October 2014 n. 976).". And so, the distance measurement in question is considered illegitimate "in so much that the adopted arrangement has no national regulatory framework that must fix its general criteria of operation, and is without any coverage in its regional legislation, that rather confirms the need to comply to special forecasts of state rank, yet still deficient".

It is reassuring to find that the persuasions proposed by the doctrine and by gambling operators is forming in the law as well.

In particular, as comment on the aforementioned judgement, what was observed in the last year is reported in relation to the contrast of the regional "Anti-slot" measures with respect to the Balduzzi Decree within the Article "The direction of the measure. The anti-slot measures on the "distances" adopted by the territory are not consistent with the Balduzzi Decree. This is why" published in the March 3rd, 2014 edition of the magazine GAME NEWS. "Some believe that the anti-slot rules on so-called "distances from sensitive places" introduced by Mayors of Governors are compatible with the measures of the so-called Balduzzi Decree.

Without recalling all the measures adopted by the national legislator, object of specific analysis published in the previous edition, at a later point we try to give evidence of the reasons for which the anti-slot measures, far from anticipating the content of the Decree, rather disregard both ratio and content.

First aspect. The national legislator is oriented towards pursuing the goal that a regulation be operated for "Distances" that are both: (i) designed for the entire national territory – therefore not on a municipal, provincial or regional portion, -; (ii) conceived at a central level throughout Government avenues – therefore not at the local level -. There ratio of the arrangement must be sought in the need of make the regulatory action homogeneous and effective on the whole State territory avoiding inhomogeneous areas.

Second aspect. The national legislator expressly expects that the participation of the local agencies in the process of regulating the "Distances" occur through

the mechanism of the unified Conference, as described by Article 8 of the legislative decree 28 August 1997 n. 281, therefore, not through the attribution of autonomous and independent legislative or regulatory jurisdiction. The ratio of the arrangement is to be sought, in this case, in the fact that the though relevant needs of the "territory", that only local mayors and Governors can interpret best, must be kept in consideration but as consultations, due to the recurrent need of unity of treatment.

Third aspect. The national legislator is expressly oriented towards forecasting the regulations of "Distances" only with reference to concessions of gaming yet to be assigned by the date of enforcement of the Decree itself. Therefore, neither to concessions already assigned, nor to instances already existing. The ratio has multiple origins: (i) the existing instances ensure a coverage of the territory with the offering of legal gaming that allows to maintain effective the fight against organized crime; (ii) the existing instances have already been selected and under contract with the State to ensure the distribution of legal gaming, foreseeing specific rules of engagement, with the central government that are more or less accelerated: changing the rules of the game at this point could cause more issues than it solves. Hitting an entire sector – that of legal gaming – while recovering investments made could create an impact not only on the industrial level but also on the social and that of employment.

Fourth aspect, not of least importance. The will of the national legislator is that of "Regulation". Therefore, not to "prohibit" the distribution of legal gaming on the entire territory. This, which might appear trivial to the eyes of many, represents, in reality, the heart of the appeals that the operators are bringing to the attention of the competent judges with experts subscribed by professionals. It so happens, indeed, that, applying by the letter the regional anti-slot measures it becomes impossible to distribute gaming in any part of the municipal territory interested. This is because there are too many sensitive places indicated or the radius of interdiction of 500 or 300 meters imposed is too large: in substance, the anti-slot regulations wish to regulate but in reality, prohibit. Despite being presented as central, such aspect has not yet had the necessary attention in judgements that have up to today matured.

So, what is there to do? With determination we must continue to present these aspects that, together with other relevant ones, will find the right consideration in judicial circles or, hopefully at this point, in regulatory functions to make clear gaming rules for operators, as the rules have always been clear on games offered to players".

Opening hours should not be subjected to delegation

The municipal ordinances on time-slots for the powering of devices jeopardize state's oversight of gaming data which is put in place in for a proper and controlled gambling

GIOCO NEWS MARCH 2015

IT has already been pointed out in other circumstances that, one of the main operator's grievances against municipal ordinances that impose time restrictions on the powering of gambling equipment is the ineffectiveness of such measure from a health perspective (i.e. the decrease of hours does not reduce nor does it contain the spread of a pathology), and the fact that they satisfy a pure public relations need. Having said that, the operators noted another and perhaps equally worrying thing: the non-functioning of gaming devices imposed by municipalities during many hours per day, measure that was later identified as an actual switching-off of the equipment, in fact threatens to disrupt working devices rules / taxation monitoring as set by the national legislature, the Ministry of Economy and Finance and, more generally, by the applicable regulations in this field, which were enacted precisely to protect the regular, controlled, and manned performance of legal gambling. The following paragraphs explains the reasons why this is true.

The entire legal framework assumes that the Customs and Monopoly Agency and the licensee selected by the state, to whom the creation and management of the telematic network is entrusted to, monitor the proper collection of wagers and acquire the relevant data, which constitutes the basis for calculating taxes and additional charges due to the state, as well as a source for the verification of proper prizes disbursements.

Therefore, it is obvious that the constant monitoring of data has at least two main purposes: on the one hand, the need for revenues and to avoid the unlawful misappropriation of taxable income, and on the other, the need to deliver lawful gaming services in order to protect consumers.

Generally, it is possible to affirm that by observing state's rules apropos of gambling equipment, as well as from concession's conventions signed by both licensee and the State with regards to the management of the telematic network (in particular, articles 2, 5.7, 14.1, Article 14.7 b) 15.1 and Art. 15.2. f)), technical specifications (article 5) and its annexes: licensee are required not only to connect the equipment to the telematic network, but also to the continuous and automated control of it, and to constantly update meter reading data sent to the Custom and Monopoly Agency.

When analyzing the relevant regulation for video lottery devices, the Ministerial Decree of January 22, 2010 reveals that the operating system must provide *"real-time dialogue with all its components; (…) storing and real-time tracking of gaming data together with the information that facilitate access to data needed for supervising and controlling (…) the constant monitoring of the correct functioning of the system components (…) the continuous powering.*

If one considers the underlying rules of the double-checking system as provided by article 1, as well as by the art. 5.7 of the technical specifications, it is important to note that *"The access gateway must ensure a constant conversation (…) between the AAMS control device and the telematic network".*

Art. 1 of technical specifications provides that the activities that the licensee must implement for the realization and management of the legal gambling telematic network by means of electronic devices must allow "*continuous and precise control of gaming, and the submission of relevant data of the functioning equipment."*

By simply observing the levels of services required by the conventional rules, it can be noted that a constant verification of the data collection is always required. Therefore, the reduction of time-slots during which meter reading is permitted (depending on application of the restrictive ordinances in that field) certainly reduces the time for the observation of the data needed and, therefore, this contrasts the likelihood that the licensee and operators of the industry can ensure a proper collection of it, as required by the law.

Furthermore, if one considers that the predicated mode of non-functioning of gambling equipment by the municipalities that, as anticipated, will be implemented by switching-off of the equipment, it is clear that the abovementioned concerns further confirms them, and are right on point.

Hence, the concerns that the switching-off of gambling equipment is capable of jeopardize the information flow thus undermining the effectiveness of both tax and legality inspections.

Furthermore, any missing meter readings could expose all of the subject involved in the supply chain (operators and carriers) to possible liabilities vis-à-vis both the Custom and Monopoly Agency and licensee.
Indeed, the license agreement act explicitly provides for the prohibition of engaging in any conduct, both direct or indirect, aimed at altering the functioning of the equipment and the information flow between the device and the telematic network (see art. 19, comma 2, letter f) and art. 20, comma 2, letter e)). Also, agreements between authorized operators often provide for the same obligations, and many time imposing strong contractual penalties.
However, it should be pointed out that, in case of litigation, be it between the parties for statutory reasons, or whether relating to the Custom and Monopoly Agency for taxation issues connected to meter reading, for administrative issue in case of any violations of levels of service or concession requirements, or due to challenges by the Audit Court for revenue or taxation revenue losses, the parties involved (either licensee, operators or carriers) are entitled to invoke such municipal regulations as the reason for revenue losses.
Only a thorough and substanced evaluation of the issue in court can expose the unnecessariness of the measure (which can be replaces by others and more effective remedies) and the illegality of the regulations enacted. The impression is that both the central administration and the government agree that combatting addiction is necessary, but with effective means and not by means of propaganda as time-restrictions regulations do. As proof of that, the often-cited article 14 of the Enabling Act includes the following: protection of bona-fide, public order and security, the balance between fiscal needs with local ones and with general needs of public health, ensure the regular influx of taxation on legal gambling, the need to prevent the spread of pathological and underage gambling, creation of transparent and standardized laws in the field of licenses throughout the entire country, reserving to the State the competence of defining the necessary rules for public order and safety, ensuring the preservation of existing local regulations in line with the present law.
All of these principles, together with other ones which were left out for the sake of brevity, highlight how the state, the national legislator and the government are willing to standardize the many local initiative, and in particular those which are effective, non-propagandist and that actually meet the challenge of tackling pathological gambling. What is left next is to see how these principles will be laid down in the decree.

Milan to drink, but not to gamble

Things are getting serious in Milan. After slot machines powering time regulations, the regional administrative court (Tar) and the council of state's ruling, the litigation goes into substance. Many risks and contradictions

GIOCO NEWS FEBRUARY 2015

In a recent ruling the Council of State confirmed the rejection of Lombardy's Administrative Court (TAR) of an appeal against an ordinance of the Mayor of Milan 10/15/2014 stating that: *"The Municipal Discipline in the field of business opening hours are permitted under art. 86 TULPS and time-slots for powering cash-prize equipment as per art. 110, comma 6, installed in the authorized business ex articles 86 and 88 of the TULPS, RD n. 773/1931 ".*

Among others, some observation highlighted by the Council of State are the following: *"no lack of investigation and motivation was found" and "the complaint concerning the unreasonableness and disproportionality of the administrative actions are inadmissible in so far as they urge the administrative judge to exercise its jurisdiction over a question of substance on the largely discretionary choices that are entrusted to technical and administrative evaluations of the political organ, unless they exceed an abnormal level".*

In order to proof that, further comments can be made, and we will necessarily later focus on these aspects during the analysis on substance.

There are numerous objections to the municipal regulation as a whole, such as the lack of a proper preliminary investigation. In the first place, the municipal administration did not deem as appropriate to prior consult with licensee and/or operators (for example, with the relevant associations).

It should also be noted that, the lamented concerns over pathological gambling by the local administration does not appear to be supported by an adequate preliminary investigation, on the contrary said concerns are exclusively based on mere data (mostly unsubstantiated data) which is not sufficient to motivate such a restrictive measure. More in detail, from the ordinance it emerges that

"in the SerT (Drug Addiction Services) of the Addiction Department of Milan's ASL, there are nearly three hundred people affected by gambling disorder, a 40% increase in each of the past three years, estimating that 2,500 people are in need of care. "
It is unclear (i) how the administration, assuming the SerT data of 300 people, could estimate that 2,500 people are in need of care; (ii) if the progressive increase of pathological gamblers in the last three years is due to "prevalence" (which does not specify whether the total number of patients are new cases or if it mixes them with repeated cases that have already been treated), or "incidence" (where the increase is given only by new cases); (iii) whether there is an assessment of the subjects that the ordinance intends to safeguard (young people and the elderly); moreover, it has been argued that the data used in the ordinance seems not to be provided or solicited by the relevant ASL; (iv) the proof of what has been asserted namely that *"in Milan, where gambling addiction covers 75% of total activities, is specifically related to the use of gambling equipment as defined by art. 110, comma 6, TULPS and, therefore, that such gaming devices are to be considered, in their negative exception, instruments of grave danger to health and to the psychological and socio-economic well-being of the local population, as well as a cause of great discomfort and at the origin of many episodes of disturbance to public peace. "*
Not to mention that the Mayor has enacted such measure without any guidance from the City Council, his decision runs contrary to an unfavorable opinion of the Advisory Committee, established by Regional Law n.6/2010 and composed by the representatives of public sector associations, trade unions, consumer associations and users, and CCIAA.
Another aspect of the dispute is that there is no assessment of the suitability of the measure in regard to the targeted goal.
In this respect, assuming that what we read in the Council of State's ordinance *"the complaint concerning the unreasonableness and disproportionality of the administrative actions are inadmissible in so far as they urge the administrative judge to exercise its jurisdiction over a question of substance on the largely discretionary choices that are entrusted to technical and administrative evaluations of the political organ",* however it is also true that, as expressly stated, the syndicate can be carried out in case it *"exceeds an abnormal level"*.
In this case, the measures abnormally exceed the levels for a whole series of reasons:
(i) The macroscopic ineffectiveness of the measure taken aimed at tackling pathological gambling (who can claim that reducing the opening hours of pastry shops is suitable to reduce the number of people suffering from diabetes? Who can ensure that after closing all the pastry shops no illegal ones will open and sell products coming from who knows where? NO ONE);

(ii) the reduction imposed is more than 40%: a total cut of 8 hours, from 18 to 10;
(iii) the existence of specific disciplines at the national level aimed at protecting minors, such as: (a) art. 110, comma 8 of the TULPS, as amended by art. 22, comma 3, of the L. 289, 27.12.2002, (*"The use of gaming equipment and devices as per comma 6" is "prohibited to anyone under the age of 18 ");* (B) Art. 24 of Legislative Decree 98 of 07.06.2011 (the prohibition of *"allowing the participation to cash-prize public games to persons under the age of eighteen");* (c) comma 21 (*"a fine from a minimum of five thousand euros to twenty thousand euros" or "the shutdown of the businesses, retailers or otherwise any legal gambling activity from ten up to thirty days");* (D) the so-called Balduzzi Decree, comma 8 of art. 7 (the *"entry is forbidden to people under the age of eighteen in the areas destined to the gambling (…)";*
(iv) the disorderly adoption of different time-slots by different municipalities, as to prove that there is not a uniquely identified cure;
(v) the continuing indications of the national legislature that has repeatedly stated and is currently highlight the need for coordination: (a) art. 14 of the 2014 Fiscal Enabling Act approved by Law n. 23 of 11.03.2014 provides the reorganization of the current provisions on public gaming and includes "binding forms of participation of the relevant municipality of the area", and thus not including autonomous deliberative powers, in accordance with "the state's power of defining the necessary rules for reasons of public order and security, ensuring the preservation of all of the local regulations enacted in line with the present letter; (b) Art. 117 of the Constitution, in its new version under approval of Title V of the Constitution, attributes to the State exclusive legislative power in the field of the protection of health, and gives to the State the power to "intervene in matters or functions not covered by exclusive legislative competence when required for the protection of the legal or economic unity of the Republic or it is necessary for the implementation of programs or economic-social reforms initiatives of national interest."
These issues will have to be dealt with during the matter of substance phase of the pending judgments, and the hope is that we will come to a just solution. A sign of the Court's willingness to better understand if the city was able to frame the problem and, if so, whether this was properly done during the preliminary investigation stage. Furthermore, having heard the relevant ASL, insights and data must be provided, as in the case of City of Pavia. In any case, it will be necessary to evaluate the scope and content of the implementation of the enabling act law and the entry into force of the reform of Title V of the Constitution, as well recalled.

To each its own

If it is true that Regions want to impose themselves over public gambling, municipalities (often, but not always) want to do the same. therefore, they are all rushing to enact regulations affecting opening hours. how is it possible that "depending on the mayor you find different diseases and different cures

GIOCO NEWS JANUARY 2015

IN the past weeks, it seems that a race between different towns in this country has started. Such race concerns the establishment of a proper number of opening hours for gaming rooms and gambling equipment, as if it were a competition between those who are able to identify the evils that must be confronted and what is the weaker sector of the population ought to be protected, and who cannot.

For this reason, I analyzed the existing initiatives in the cities of Salerno, Rivoli, Genoa (the mot updated), Milan, Padua, Reggio Calabria. The results are the following.

Omissis

Every town claims to have its own evils, its vulnerable subjects and has identified its own specific cure. Essentially there is no consistency between the problem and its purposed cure. Are we sure that things are as presented by municipalities? Are we sure that each and every area has so many different problems and solutions? But above all, are these actually effective solutions? We think not, and we are trying to raise awareness about it in the relevant courts. Time after time we have highlighted how certain provisions can crucially jeopardize both specific interest of legal gambling operators, and general interests of a higher order such as safety, public order and need of tax revenue.

The time restrictions, which sometimes are so devastating to the point of more than halving the number of daily opening hours, have such a negative impact on operator's revenue that they imposed an unbearable burden, so much so that it can highly undermine their own existence. Indeed, the reduction of functioning hours corresponds to a high reduction of revenues, while

at the same this cannot be said about costs – which are almost all fixed – resulting in such a permanent and structural loss to the point of compromising, downsizing occupation and perhaps the closure of the business.
Obviously, a measure that determines the closure of legal economic activity in favor of other interests deemed to be more legitimate, cannot be defined as a one that properly balanced different interests.
And this is especially true when the ordinance (such as that of Formia, which was annulled by Latina's TAR) does not offer any detailed evidence of the problem that one wants to solve (pathological gambling or something else, which in reality is far less compared to what feared), nor of the effectiveness of the purposed measure (time reduction is neither a cure nor appropriate for reducing temptation of weaker subject). Because of these shortcomings the principle of balance between interests (one on which judges often rely on) should be evaluated more carefully by taking into account the burden imposed on the citizens, in this case time restrictions. In other words, before killing a business sector, try at least to be sure in advance that it is done for a reason that actually exists and that is known, and because such tool is an irreplaceable and effective one in order to completely solve the issue.
What emerges from the appeals is that, the ordinances affect the powering of gambling devices rather than the shop itself. This is not supported by any form of precedent, on the contrary is against national law, as well as with concession obligations dictated by the Customs and Monopoly Agency, given that the switching-off of the devices would negatively affect the monitoring process and the required standards of services as set by the concession contract, which would lead to penalties.
Not to mention that in almost all of the instances, even if Article 50, comma 7 of TUEL were to apply, municipalities still do not abide by what established by Municipal Councils.
Moreover, we continue to point out that such time restricting measures are unfit for achieving the targeted aim, namely to tackle the spread of various phenomenon connected to the use of gaming devices. Even in court we have often tried to help people reflect by posing a simple question: who can ensure the reduction of opening hours for pastries reduces the number of people affected by diabetes? Who can ensure that by closing all of the legal shops illegal ones will not open and sell dubiously produced goods that could seriously harm people?

On several occasions, we have emphasized that municipalities lack of an assessment of the effectiveness of their measures, nor do they assess whether time reduction regulations are the only viable action or if they are in itself suitable for accomplishing the purpose, as well as the attempts to quantify said phenomenon are entirely based on hypothesis, some of which have been debunked by the local ASL.
Not to mention that time restricting provisions are not backed by any national or, in certain cases, regional law.
The Balduzzi Decree clearly entrusted to the State the power to legislate in the field of gaming equipment, instead gives local governments the opportunity to participate through the Joint Conference mechanism, and therefore not through the allocation of legislative / regulatory autonomous, independent and uneven competences.
In addition, the Fiscal Enabling Act (approved by Law n. 23 of 11.03.2014) calls for the reorganization of the existing provisions on public games in one unified code to "introduce and ensure the application of transparent and uniform rules throughout the country in the field of gambling licenses, of authorization and monitoring, ensuring mandatory forms of participation of local authorities at the authorization and planning process, taking into account distance ranges from sensitive locations that are valid throughout the country, of the allocation of gaming rooms and shops in which sports bets are the core business activity, as well as gaming equipment installation." Again "binding forms of participation of the relevant municipality" and thus not including autonomous deliberative powers.
Not to mention that the proposed reform of Article 117 of Title V Part II of the Constitution under approval (Art. 24 et seq. of bill n. 1429 - approved by the Senate on August 8, 2014), gives the State exclusive legislation on general rules for the protection of health, and the possibility of the State to *"intervene in matters or functions not covered by exclusive legislative competence when required for the protection of the legal or economic unity of the Republic or if necessary for the implementation of programs or economic-social reforms of national interest. "*
Finally, we have often emphasized that the issues we are dealing with are not important only for individual operators or for the business sector, but for the entire community. The general interests are: (i) curb organized crime that is always ready to offer illegal gambling in those areas affected by restrictions; (ii) contain distorting effects that affect vulnerable subjects that may have access to

illegal gambling, therefore without rules, hence by definition more dangerous and harmful; (iii) curb the loss of tax revenue from the loss of revenue; (iv) contain the downsizing of employment levels of the entire sector hit by the ordinance.

Is it possible that we cannot put an end to the problem? Sometimes one wonders: if even a small fraction of the PREU was destined to those areas in which it accrues (for instance, something similar to what happens for IMU property tax) would legal gambling still have all of these enemies?

Stability, Avv. Cardia: "*standards on gaming, risks of favoring illegality*"

GIOCO NEWS ONLINE DECEMBER 24, 2014

THE government has as one of its prerogatives to make choices about economic policy by using tax leverage, the science of finances. Now the choice made by the Government in stable law 'to draw from the gaming industry, and in particular by the equipment, takes an amount of 500 million Euro, in addition to those that are already being taken is equal to that of the equipment, about 4 billion, annually.
There is nothing tragically new here: the gaming market, especially the equipment, is not appreciated by everyone during the year, but with demand at the door, it is always the most sought after. Think of the million withdrawals imposed on dealers with a so-called Abruzzo decree, after the dramatic earthquake or more simply with the ever-increasing PREU (tax on gambling) over time.
So where is the novelty now? It is a fact that the government has clearly indicated that the sum is due from all the subjects in the chain: not only the dealers (which we remember are only 13).
So, what is the problem? Why do the operators - all of them - complain? Surely the complaint is nonsense - this time perhaps untenable - relying on gaming to finance public spending that everyone - from the Court of Auditors to experts, from citizens to foreign authorities, is considered to be out of control.
But the painful notes do not end here: firstly, the shortcomings of the legislation itself (which could jeopardize their constitutional tenure or compromise the functioning of current activities) must be addressed, and second, with the unequal treatment on the ground - once again - with respect to the game distribution activities are "parallel" if not illegal.
The law is badly written because it is incomplete, in some respects, and because it does not take into account the actual functioning of the sector, in other respects.
The standard is incomplete because in addition to establishing the principle that all (those involved in the supply chain) must contribute to the sum shown

to be 500 million, it does not clearly state which of these subjects are effective and which of these subjects are somehow barring the way. It would be enough to identify them accurately by recalling the normative references of interest relating to the decree establishing the so-called RIES, the Registry of Enabled Subjects.
But that which contributes more and more to the instability resulting from the reading of the rule is that it does not determine the quantum of participation in the levy. It is because whether or not one qualifies, however, the amount of 500 million is set as a withdrawal, a tax asset that has identifiable entities (not well identified but identified) but without the quantification required by law. It is here that one might wonder whether the minimum competition is divided according to the general principles of solidarity or proportionality with respect to how individuals participate or have participated to the sums available. The standard is basically baseless, and the astonishing thing is that the legislator is aware of it, instead of resorting to repairs, sets out principles that he thinks to be remedies, but that remedies are not sharp as they pretend to be, thus displaying themselves to be a dull weapon.
This is because the said pseudo-remedies run to the rescue (in the mind of the legislator but not in reality) of the dealer so that he can impose a system revolution through a complex operation of renegotiating contracts with the rest of the chain. The legislator says that the concessionaire may impose the renegotiation of contracts by invoking the principle that it cannot - by law - pay the fee to other operators in the chain, unless they too have renegotiated their contracts.
But in this case, the legislator forgets - not the operators of the sector - that the corresponding compensation is not actually in the hands of the dealer, since the dealer has always been compensated by the sums collected by the subjects of the chain itself.
Some might argue that the legislature then tries to give strength to the operating system of receipts stating that the resources entered in the devices are state resources, and that they should poured back into the concessionaire who then makes payments to the downstream sector of the renegotiation contracts. As a result, chain operators who decide not to repay the sums must be reported to the administration and indicated to be procured by the republic. This seems to be peculiar but not of necessarily misappropriation.
All this as if these positions are by themselves capable of inducing in the space of a morning everyone involved (13 dealers, thousands of managers and tens of thousands of merchants) to quickly renegotiate the contractual relationships.

This is, though, among other things, without the quantity being specified by the legislator.
And if something does not work? Should the courts then become involved? Civil? Criminal? And on what kind of reaction times can the system count?
That being said, it is evident that the law of proxy, which has been announced in the same way, must, without delay (before the creation of parity and damage to private and public interests of public interest, such as flooding or spreading of illegitimacy) remedy the inaccurate and hasty normative and technical gaps. It cannot be accepted that, in the event of a technicality on the part of the dealers, the rest of chain must cover the dealers, the hedge rate, with payments due since April. It cannot be accepted that the dealers have the burden and the risk of revolutionizing the operation of concession system which was originally set up differently.
Another aspect which screams revenge is the illicit - if not illegal - treatment reserved for the parallel market of the distribution of gaming that continues to be outside of the withdrawals in question and who was asked for a sanatorium which is, in fact, not even comparable to the acquisition of even one right.
And in closing, since the norm is being studied with a view to a wider revision of the sector, it is surprising that from above the legal sector continues to be harassed and drained by the state, while from below it seems that, again by the state, abandoned to itself same to a wicked and disorganized territorial (communal and regional) legislation (and defended by the TAR, the State Council and the Constitutional Court without even considering merit). There is no municipal ordinance or regional law which provides regulations of distance or location (all instead provide for a prohibition on the entire territory of reference) and there is municipal ordinance which provides equal hours of operation that are reasonable (and these are thus ineffective).
There is no longer time or margins to make any other mistakes.

What is happening in Milan concerning the appeals against time restricting ordinance

AS.TRO. WEBSITE NOVEMBER 2014

IT'S not the best of time. After a wave of regional and municipal measures on minimum distance, which practically prohibits rather than regulate gambling, the latest fashion is to impose time restricting regulations on daily opening hours and on the powering of legal equipment (I repeat it, legal ones).

We know all about the Presidential decrees that accepted the demands of some recurring operators. Concerning the ordinances later issued by the TAR of Lombardy, instead of ruling in line with said decrees, it rejects them. And this happened both before and after the issuance of other rejecting ruling across Italy (such as in Reggio Calabria and Padua).

It is unfortunate that all of the 8 ordinances issued by the Tar of Lombardy essentially coincide with one other, except for some nuances since not all of the appeals focused on the exact same motivations.

Now, beyond the radical battle against the unfitness of the measure (time restrictions) with respect to the stated objective (the protection of the weaker segment of society), which probably concerns more the debate over a matter of substance rather than a general question of precautionary measure, we reluctantly note the lack of an evaluation of a dual-formal aspect (which generate substantial effects) in said ordinances.

On the one hand, even if for the sake of argument, we affirm that the municipality has the right to impose time restrictions as per article 50, comma 7, still the municipality must comply with the procedure established by the same article, namely it should adhere to the City Council's guidelines.

On the other hand, the article in question refers to the daily opening and closing hours of business, and not to the powering of equipment.

I do realize that these are not two exceptions capable of solving the problems

of the industry (the assessment of the suitability of the measures with respect to the objective and other exceptions manifested in the appeals would be capable of doing so), but it should be noted that these two aspects are simple and easy to evaluate.

The appeal brought before the Council of State against these ordinances is the preferred path of the legal gambling operators with whom we share, since the beginning, the difficulties for challenging such a hostile jurisprudential environment, though this is not the only challenge, with whom we all must deal with concerning this matter.

The great conflict

Municipal time restrictions to public gambling is a recurrent theme: but the state seems not to agree

GIOCO NEWS DECEMBER 2014

IN these days, mayors' initiatives that set time limitations for both the opening and closing of gaming shops, and for the powering of gaming equipment installed in other and different business activities are spreading.

Operators (representing the entire sector, from dealers to managers, to traders) have not failed to protest and to appeal these measures. In some cases, they even obtained unexpected suspensive orders for the relevant administrative courts (TAR), as in the case of Lombardy for the ordinances of Milan and Pavia.

Appeals were presented based on the municipal competence/non-competence in that field. The outcome is uncertain given the Constitutional Court ruling of past July, which significantly opened the doors for municipalities to use the art. 50 paragraph 7 of the TUEL also in the field of gambling.

For this reason the appeals moving the focus of the complaints to different but equally important aspects, such as the inadequacy of the measure (also soliciting experts feedbacks), the inability to use the recalled article for "switching-on and off" of the devices, the inadequacy of the preliminary investigation (for the lack of a real assessment of the phenomenon) and the possibility of altering the probability of meeting the service levels, contained in the agreement convention, and in turn even those ones imposed on third authorized parties such as gaming rooms managers, managers and operators.

One thing makes the operators not alone in this battle. And this is an evaluation that goes beyond the solidarity of people or institutions. Operators do not have to feel alone because, at least on paper, the national law seems to have long invoked the need for a unitary treatment of the subject throughout the country even if, at least at the moment, they feel neglected.

And in fact, tired of the continuous leaps forward of local authorities whose

aim is to do good, but in reality, they end up creating a series of problems in the public sphere (tax revenues, public order, effective restraint of compulsive gambling), the national legal system is evolving in the right direction, namely to yes involve local authorities, but in line and coordinating with the principles laid down by the national legislature.

Even the municipal framework on opening hours is clearly inconsistent with both the principles of the Tax Enabling Act (approved by Law n. 23 of 11.03.2014) and the reform of Title V Part II of the Constitution under approval (Article 24 et seq. Of DDL N. 1429 - approved by the Senate on August 8, 2014). The Legislator (with the attribution of fiscal empowerment) but also the Government (which must implement it and notoriously push for constitutional reform) are giving important and useful inputs for solving the issue we are dealing with.

Article. 14 of the Tax Enabling Act 2014 approved by Law n. 23 of 11.03.2014 provides for the reorganization of the current provisions on public gambling in a code, with the intent to regulate the industry in a unified manner and at the national level, in compliance with certain principles, including "To introduce and ensure the application of transparent and uniform rules within the national territory for gambling licenses, authorizations and controls, guaranteeing binding forms of participation by local authorities during the authorization and planning phase, which takes into account distances from sensitive locations that are valid throughout the country, the local distribution of gambling halls and shops where sports betting is the main business activity, as well as the installation of equipment suitable for lawful gaming as referred to in Article 110, paragraph 6, letter a) and b) of the TULPS". Among the principles, then, it is expected the participation of local institutions to the decisions making process concerning the distribution of gambling exclusively through "binding forms of participation of the relevant municipality for the area" and thus not including autonomous deliberative powers.

All this is in accordance with the "state' reservation of defining the necessary rules for public order and security, ensuring the preservation of the regulatory disciplines that have been adopted at the local level which are consistent with the implementation principles of this letter".

The dual purpose of the National Legislator is thus evident: (i) standardize the discipline at the national level in the gaming industry even in light of local regulations enacted in the meantime that respect the implementation princi-

ples set out in the Tax Enabling Act; (ii) regulate and not prevent or expel from the national territory the activities relating to legal gaming in pursuance of protecting bona-fide, public order and safety; to reconcile taxation needs with local ones, and with the general need of public health; preventing money laundering of gained from illegal activities; ensure the smooth inflow of the taxes imposed.

Moreover, the national legislature seems to give another clear signal of wanting to stop the spread of such measurers for health reasons: in this regard, it is appropriate to invoke the constitutional reform of Title V, which is still before Parliament.

Article. 117 of the COS, in its new form, attributes to the State the exclusive legislation on general rules for the protection of health. It then grants the State, and here is another strong signal, the ability to *"intervene in matters or functions reserved to the exclusive legislation when this is required for safeguarding the unity of the legal system or the economic unity of the Republic or because necessary to the realization of programs or social-economic reforms of national interest"*.

Such reform did centralize the exclusive competence in the field of health and, therefore, all the regional and / or provincial measures adopted under the concurrent jurisdiction will also be assessed in light of the ongoing constitutional reform. The need for a unified framework on health, and the need for a thorough national investigation aimed at ensuring the effectiveness of the measures taken, prompt the national legislator to retain for itself the exclusive competence for, hopefully, preventing that local authorities from intervening with uneven and ineffective regulations with respect to the purposes goal.

Gaming in the shadows

The legal gambling industry and the City of Genoa: everyone is talking about it. the rules are not just too tight, but they radically ban advertising and legal gambling

GIOCO NEWS NOVEMBER 2014

I was informed of an article published on repubblica.it entitled " Gambling Lords rally against Palazzo Tursi " article in which it broke-out the news that some operators pressured the Council of State to evaluate the possible illegitimacy of the crowding-out effect of the recent Genoa's regulation and of a Liguria's Regional Law. Some comments can be made about it.

Regardless of the terminology used for calling-out companies, in defiance of a story – of international relevance – of legality and seriousness, one can immediately notice that the move is seemingly only a matter of lexicon. Indeed, the article reads that operators consider the rules to be "too restrictive".

And "operation truth" must be carried out.

Let's start with advertising. The municipal and regional rules are not just too restrictive, but they are an actual absolute ban on advertising. Article 9, comma 15 of the contested regulation provides that *"Any advertising activities relating to the opening and functioning of gaming halls is prohibited"*. Obviously, it is a whole different matter at the national level: the Balduzzi Decree, comma 4 of Art. 7, does not introduce a total ban on advertising, but provides for specific disclosure rules. One might ask how would the national television broadcaster behave for advertisements – which are perfectly in line with the Balduzzi Decree – that cannot be broadcast in the city of Genoa because of these new rules: should we inhibit the signal for TVs in that area?

Moving on to another topic, which is even more important, it must be emphasize that, as many time discussed, the point here is not that the minimum distance imposed by both the City of Genoa and the Liguria Region are "too restrictive". The point is that the minimum distance imposed create an absolute ban on the whole territory of the City of Genoa: if the law was to be applied literally, there would be no room at all for the opening of a gambling

activity, neither now nor in the future.
The legal operators simply highlighted to Council of State that unlike what stated in principles ("we regulate the territory", therefore there are areas in which it is permitted while others off-limits) every area of the city falls under the ban. The argument that we make is that the measure is simply ill-conceived: the stated goal is to regulate the distribution, while the outcome is prohibition of it. The consequence is that it determines the inability to develop new initiatives, to expel existing ones or that upon renewal of the five-year authorization or in case of take-over of the business or relocation of equipment, the authorization will be denied. That is because there is virtually no existing business located in an authorized area, given that the entire territory is covered by the ban.
Well, unlike what the news article affirms, the operators are not concerned about the fact that upon expiry of the five years they will have to "move": they already know that they will have to leave Genoa because the will have nowhere to go due to the current law.
Sooner or later the absolute prohibition will be capable of hitting both the existing and future legal gambling industry. The limitations affect: (i) existing public gaming rooms, since, as per art. 10 comma 1 of the Regulation *"the authorizations as of art. 86 and 88 of the TULPS, (…) are granted for five years*" unless renewed, which is likely to be assessment in compliance of the abovementioned limitations; (ii) future public gaming rooms since, as per art. 8 comma 1 of the Regulation, the opening is subjected *"to obtaining a municipal authorization, in pursuant of art. 86 of TULPS and RL 17/2012* ", issuance that will be subject to the abovementioned limits; (iii) the existing AWPs, since art. 21 comma 4 states that *"in case of replacement of a device (…) the SUAP must be notified"* and comma 5 that *"in the event of a change in the type or number of one or more device (…), a new request must be submitted* " whose favorable outcome is likely to be assessment in light of said limits; (iv) AWPs to be installed in the future, in pursuant of art. 19, comma 3 *"in relation to automatic equipment and devices, semiautomatic and electronic ones as per the previous comma [those specified in art. 110 paragraph 6 letter a)] requires an authorization as per art. 86 TULPS, in the manner prescribed by art. 1 second comma of the RL 30.04.2012 n. 17* ", whose release will be evaluate in line with the aforementioned limits.
Inevitably, what follows is that in the absence of a legal offer, many and various forms of illegal supply are ready to satisfy a steady demand.

And here we can make another observation: the claim that the contested measures were adopted for the good of the citizens.
However, the question that one must ask is the following: a measure such as the one in Genoa and in the Liguria Region, which crowds-out legal gaming and opens the door to the illegal gambling, is it good for the citizens? It must be said once and for all and in all honesty that one thing is to allow player/users to play in legal places, with legal instruments, with legal games, with controlled and limited prizes, with performance criteria assessed and approved by the state. Another is to leave gamer/user at the mercy of illegal product or unvetted games that will completely fill in the vacuum created.
I must also add that whenever I rally against a measure that restricts the spatial distribution of the gambling supply, whenever I am confronted with a new minimum distance, and I dwell on the motivation (almost always) such as the protection of health, a question always arises on the matter of the effectiveness of the measure: does the minimum distance policy actually solve the problem? Indeed, it reminds of the criterion used to install mobile antennas, namely a criteria based on a healthy way to do it (topic that has nothing to do with legal gambling).
Frankly I always have some misgivings, because I cannot understand how one can defeat diabetes by putting pastries out of business, without considering that the roads would be flooded by illegal stalls selling good made who knows how and where. But that's another story, although it might one day suddenly become a fashionable one.

Gambling and territories that want to ban it: good sense?

The crowding-out effect that characterizes the numerous initiatives on the part of local entities against legal gambling should be banned: it is unconstitutional and to suggest it is (or better, should be) good sense

GIOCO NEWS JULY/AUGUST 2014

While the work which the law delineates, in essence, legal gambling and its locations, there is intense debate in government and Parliament. At the same time in the courts there are never-ending requests by the laborers in this sector for affirmation about important principles. While the hypothesis that city anti-gambling ordinances are outside of the regional laws is waiting to be heard in July at the Constitutional Court, there are no regional anti-gambling laws being reviewed, since until present day, judges have interpreted that city ordinances against gambling do not have merit in spite of the number of requests for clarification about its constitutional legitimacy.
It does need to be said, in any case, that there have been many new questions, for which there is great anticipation. All of these questions come from an element that until now had not been considered - if not marginally - in the jurisprudential pronouncements: The so-called crowding-out effect, of which is widely spoken and also appearing in preceding articles.
With the crowding-out effect it is intended to define the capacity of the measures of the anti-gambling laws issued by the territorial entities with the institution of areas of restriction within predetermined distances at sensible, identifiable points. It is not, therefore, intended to declare the regulation of the diffusion of legal gambling of the territory, with areas where it is permitted and areas where it is not permitted, but an actual expulsion of gambling with these same specific, compact, firm territorial perimeters where it is absolutely not permitted. Areas of total interdiction that, in the way in which the contested provisions are formulated, sometimes find direct application in the existing reality not only in the one to come.

It is evident that it is not merely question of private entity. It is evident that the crowding-out effect, so devised is intended to impact the interests of the general points of the current law not only limited to those currently in operation. In fact, it should be pointed out that: (i) the economic discomfort and the consequent repercussions not only affects the single entity (of the legal gambling) but also the entire commerce that surrounds it (of management, exhibition, manufacturers, dealers, etc.) in said territories; (ii) the abandonment of investments affects not only a single disappointed investor, but also the investors of the commerce that surrounds it, with concrete and important implications on the local occupational plan; (iii) the loss of revenues is not limited to the single legal entity, but is widened to the annual revenue to be matured in the territory, something which is now the focus of national and local attention for the country's major crisis; (iv) the concrete risk that organized crime will return to gambling, reoccupying the territory concerned and fulfilling the demand for gambling that is present either way.
In other words, it deals with injury to interests that are nearly incalculable, and certainly, almost totally irreversible.
This being said, normally, the current entity gives proof of the crowding-out effect with sworn statements, and if these statements are held by a judge, it is not proper to question the alleged circumstances. These should be verified by an official third party technical advisor, that for the purpose of the central argument is completely unbiased.
The question therefore, put to the judges even before the legal merit of common sense, is: is it a good idea to put into place A measure which is said to regulate and instead prohibits? Is it a right to put in place a provision that prohibits when the state legislature has decided to regulate? In light of all the negative consequences that such a measure is capable of determining, would it not be worthwhile to put it quickly to what may be an uncomfortable but necessary evaluation once and for all? Also, if the provision in question is a local provision that overlaps with a regional law, is it sure that the regional law does not violate any principle dictated by the Constitution?
Everyone knows that the question must be addressed with the knowledge that the verdict of the Constitutional Court 300/2011 and of other formulations of the State Council in terms of location - Even though they are oriented not to exclude the competence of local authorities and the application of zones of interdiction - however, they totally exclude the evaluation of the expulsion

effect of the measures they have analyzed.
The issues of constitutional illegitimacy affecting the presumed regional rules and which are made even more manifestly unfounded by the expulsion effect originate essentially: (i) in violation of the statutory reserve; (ii) in contrast to the requirements of unitary treatment in the national territory; (iii) in breach of the prohibition on the provision of rules concerning the determination of the essential levels of benefits; (iv) in the injury to freedom of economic initiative.
The crowding-out effect represents the evident proof that with the provisions that have been adopted, a power has been exercised that does not fall within the powers conferred by the legal order on the territorial or regional body. No one outside of the State can say that he has the power to radically ban, in the entire territory, the exercise of a lawful and regulated activity by the State, which the State has decided to regulate rather than prohibit. The same critical conclusions occur, then, wherever the territorial or regional entity commits a mistake in the logic in the drafting of the legislation, which is far from the actual, concrete situation which it has determined (such as prohibition instead of regulation).
Concerning the question of ultimate illegitimacy only in order of exposure, it should be pointed out that Article 41 of the Constitution guarantees the liberty of economic initiative; and that in the case being examined this liberty is obviously frustrated by the objective impossibility of allowing the distribution of legal gambling on any part of the territory affected by the measures having a crowding-out effect. Certainly, the so-called "sacrifice imposed on the private" cannot be considered, since the expulsion would require the private not a mere sacrifice, but rather an irreversible damage: a radical damage of business activity, a complete eradication of the activity of enterprise from the location in question.
Obviously, the solution is a ban of the crowding-out effect in of the anti-gambling laws. This solution, whether judicial or policy, is anticipated by everyone in the entire gambling sector, and is reasonably assumed to be common sense.

Slot and joint regulation of the accounts

Antislot regulations: the state council awaits the decision of the Constitutional Court on the competence of the common municipalities, in the absence of a Regional law

GIOCO NEWS JUNE 2014

Accepting the first motive of the respondent, the State Council recently suspended the judgment on the appeal lodged by the City of Vicenza for the reform of the judgment of Tar of Veneto, which annulled the antislot measure adopted by the municipality itself. The College was explicitly requested to assess in advance the recurrence of the grounds for the suspension of the proceedings pending the Court's assessments according to the extent of the expulsion effect determined by the contested measure. Following the hearing, during which the request was reiterated, the College decided to pronounce itself as said, suspending the pending judgment by the Constitutional Court on the question of legitimacy raised by Tar Piedmont in relation to article 50 comma 7 of the TUEL, in so far as it does not confer the power to regulate gambling in the municipals (see, in particular, two ordinances of Tar Piedmont No. 200 of February 14, 2013 and No 990 of September 18, 2012 with which the question has been raised).
However, at the same conclusion (suspension of the trial under Article 79, comma 1, of the administrative procedural code and article 295 of the CPC), the same State Council had already received similar judgment (see, in particular, Order of the Council of State No. 6404/2012 of December 13, 2012).
In the present case, it has been pointed out that the regulation adopted by the City of Vicenza - which imposes territorial limits on the opening of gambling and use of the equipment, and which also attributes to the mayor the power to limit the opening hours and the use of said equipment - was adopted, as stated in the resolution of the City Council, "pursuant to Legislative Decree 267/2000 *e s.m. e i* " (That is, the TUEL). This is of the same article 50, com-

ma 7 of the TUEL, with express reference also "to article 49 of Legislative Decree 267 of August 18, 2000" relative to the "favorable opinion to the proposal for a resolution on technical regulation" (see in particular Resolution No. 62/86323 of December 19, 2011 on the adoption of the Regulation and article 11 of the Regulations of the City of Vicenza).
Considering the merits of the matter brought to the Constitutional Court, one may recall what follows.
The evaluation of the usability of Article 50, comma 7 of the TUEL, as anticipated by the Constitutional Court, would complete the case law on the existence or not of a direct competence of the municipalities, in the absence of a regional coverage law (or of the respective autonomous province), regarding gambling.
As is well known, it has happened that some mayors, including the one in Vicenza, have considered it possible to intervene, when there is no coverage of a regional law in the regulation of public gambling, setting new and further limits than expected by the national legislature (for example, distance from sensitive places or opening hours for locations used for gambling access to equipment in other commercial establishments) by leveraging alternately two rules which, for other purposes, and for other sectors, assign power to regulate to the municipalities. In particular, these are: (i) Article 50, comma 7 TUEL, according to which "the Mayor, ..., coordinates and reorganizes, on the basis of the addresses given by the City Council and within the criteria that may be indicated by the Region, the timetable for business, public and public services, ... to harmonize the completion of the services with the both the complete and general needs of the operators"; (ii) Article 54 comma 4 TUEL states that "the Mayor, as Government Officer, adopts, by reasonable act and in compliance with the general principles of law, contingent and urgent measures to prevent and eliminate serious dangers that threaten public safety and urban security".
It is true that with regard to Article 50, comma 7, of the TUEL, Tar Piedmont stated that "connected to the profile of the lack of competence is, moreover, that of the lack of a cover law, which allows the municipality to adversely affect subjective personal situations associated with freedom of economic initiative. This cannot be deemed to be the legal provision of Article 50 comma 7 of Legislative Decree 267 of 2000, which allows the Mayor to exercise the power to set timetables for public exercises but only "in order to harmo-

nize the fulfillment of the services with the complete and general needs of the operators "and not even for State-owned public security purposes". In particular, TAR considered the question of the constitutional legitimacy of Article 50, comma 7 of Legislative Decree n. 267/2000 and Art. 31, comma 1, legislative decree n. 201/2011, converted into law n. 214/2011, "in so far as they determine a situation of absence of normative principles in contrast to the pathology of "ludopathy" or an addiction to gambling and exclude the competence of municipalities to adopt regulatory and procedural acts aimed at limiting the use of gambling devices referred to in comma 6 of art. 110 of the R.D. 18-6-1931 n. 773 (Approval of the only text of the public safety laws) in any exercise authorized by it pursuant to art. 86 of the same law, for breach of Articles 118 and 32 of the Constitution ". Moreover, in the remand ordinances it is stated that "(...) the prevailing norms violate the constitutional precepts of art. 32 and in particular Article 118 of the Constitution, which states that "administrative functions are attributed to the Municipalities unless they are assigned to provinces, metropolitan cities, regions and states on the basis of the principles of subsidiarity, differentiation and adequacy, in order to ensure their unitary exercise. (...)". As regards the alleged infringement of Article, the TAR states that "the current legislation does not protect public health by combating "ludopathy", since the public function does not take into account the authorization to use gambling equipment released on the previous date to the discipline of conversion of the Decree Law 13 September 2012, n. 158 ". It is possible that the Constitutional Court can and will clarify these circumstances. In anticipation of the Constitutional Court in relation to Article 50, comma 7, the jurisprudential framework of the regulations adopted in the absence of regional law (or its autonomous province) would be completed, 'art. 54, comma 4, of TUEL, on April 4, 2011, the judgment of the Constitutional Court n. 115/2011 has already declared the illegitimacy of the article where it allows the Mayor, as Government Officer, to issue non-contingent and urgent measures, which have an indefinite effect. According to the Constitutional Court, the censured standard, in providing for a power of order of the Mayors, not limited to contingencies and urgent cases, would violate the Constitution and, in particular, the relative legal reserve referred to in art. 23 as "affiliates ... (which)are obliged, according to a supreme principle of the rule of law, to submit only to the obligations to be done, or not done or to provide (that which is) generally provided by law", art. 97 "which also establishes a rele-

vant legal reserve in order to ensure the impartiality of public administration, which can only implement, even with further regulatory determinations, what is generally provided by law", as well as 'art. 3, "as it allows the administrative authority - in the kind represented by the mayors - different and varied restrictions, resulting from multiple assessments, not attributable to a single legislative matrix."

That being said, it should be remembered that once the above-mentioned framework is completed, one cannot ignore the impact assessment of the phenomenon of the expulsion effect. Although it will be necessary to monitor the progress of case-law assessments regarding regulatory powers of the regions, regardless of the evolution, the regulatory framework is still far from being stable.

When the law violates the law

In the previous article it was highlighted that the crowding-out effect enclosed in regional laws violates the license play. it is affirmed therefore that this principle violates the law of the state

GIOCO NEWS MAY 2014

Among the initiatives taken to counteract the phenomenon of "anti-gambling" regulation by mayors and governors is the rise of the question of the constitutional legitimacy of these municipal regulations when there are regulations already imposed by the State's public gambling laws.

The legal system at this point is as follows: (i) the State is to take care of matters relating to public order (see, in particular, Article 117 (2) (h) of the Constitution according to which "The State has exclusive legislation in the following matters: ... h) public order and security ..."); (ii) certain laws penalize those who practice gambling (see, in particular, Article 718 (c)); (iii) the system establishes an explicit reservation that the organization and operation of games of chance and competitions associated with prognostic skills are reserved for the state (see, in particular, Article 1 of Legislative Decree 496/1948).

The Constitutional Court in 2006, which some might say in a non-suspect era, demonstrated that it had the heart of safeguarding the gaming law (see, in particular, Court Cost No. 237/2006). On that occasion, the Court noted that the material referred to the adoption of measures relating to the prevention of crime and the maintenance of public order, which falls not only in the rules governing gambling but also in the regulation of legitimate games. On the basis of this reasoning, the Court declared the illegality of certain provisions relating to public games adopted by provincial law.

The ratio of the statutory reserve is explicitly stated in a ruling that identifies "the need for the crime to be eradicated and, more generally, [the need to ensure] public order, the need to protect players, [and the need of] control of a phenomenon that is likely to involve substantial cash flows" (see, in particular, TAR Lazio, Rome, Sector II, n. 4296/2005).

Subsequently, in an order of the TAR Lazio, it is deemed to suspend the trade

union order aimed at restricting public gambling by means of gaming machines. (see, in particular, TAR Lazio Order No 5748/09). Moreover, the TAR Veneto suspends a trade union order on the assumption that "in order to counter social issues deriving from the use of gaming machines, the Municipality has the power to intervene, in the exercise of its ordinary powers, by targeted interventions to support those who are subject to any prejudicial effects but cannot take measures that in fact "arbitrarily overlap with the legislative framework" (see, in particular, TAR Venetian Order 557/10).

At the same time, a judgment of the TAR Piedmont, which accepts the appeal as "the absorbent capacity ... of the first plea in law, where the applicants have shown both the existence of State jurisdiction in substantive matters and the legislative coverage of the contested rules. By anticipating a "deactivation" time of gaming machines, the City has given up a regulatory power that does not find support in any legislative provision, and which even reveals that it integrates an invasion of the remnants of the state "(see, In particular, TAR Piedmont judgment n. 513 of May 20, 2011).

Similar argumentation is supported by the TAR Lombardy, which, declaring the illegality of a municipal regulation which provides for further limitations to those provided by AAMS for the exercise of certain types of public games, states that "While it is true that the article recognizes the common regulatory powers on the organization and the performance of the duties assigned to them, this power does not allow, even if it is motivated by sociological reasons, which is also dubious, actions to counteract the effects of prolonged use of videogames, as part of the regulatory powers attributed to the municipalities, interventions that have the effect of interfering directly or indirectly with public-security functions (public order and security), thus affecting Constitutionally guaranteed connected rights" (see, in particular, TAR Lombardy judgment, Milan, Sector IV No 3951/2005).

Finally, the TAR Piedmont states that: (i) "the discipline of article 1, paragraph 70, of the Stability Law for the year 2011 n. 220 of 2010, effective from January 1, 2011) ... does not require the municipalities, but the autonomous administration of state monopolies (AAMS), in cooperation with the Ministry of Health, to set up lines of action "for Prevention, contraction and recovery of "ludopathy resulting from compulsive gambling" (ii) "The fact that this is a legitimate game and certainly not gambling emerges, moreover, from Article 1, paragraph 497 of the Law 30 December 2004 n. 311, which states that the

collection of games by way of gaming machines a matter reserved for the State "(see, in particular, the Ordinance of the TAR Piedmont of September 18, 2012).

But then it seems all well defined! Instead, it is not. Five years after the above-mentioned judgment, in 2011, the Constitutional Court, called by the Government of the time to clarify the laws of "legal gaming" of the Province of Bolzano, asserts that there is no violation of the law, because the subject matter would not be public order but other concurrent subjects. The Court further adds that, for the purpose of assessing the possible limitation, the effects of the rule under consideration need not even be examined, because it would not have any possible effect on the public order, and there are no particular profiles, even if reflected, of public order.

So why not ever persevere in raising the issue of constitutional legitimacy for breach of law if the Court has negatively declared?

Because in the present case, the violation of the statutory reserve must be assessed beyond the judgment of the Constitutional Court 300/2011. The violation of the statutory reserve must be assessed in the light of the previously described expulsion effect of the regional norms.

The expulsion effect, if demonstrated, is capable of directly affecting State law, since it actually determines the prohibition of the game in the territory concerned when, on the other hand, the State, the national legal order, by virtue of Described the legal reserve, considered it fair to operate a regulation of the game itself, thus overcoming its prohibition.

In other words, the expulsion effect is not only capable of affecting the sector of illegal gambling (to satisfy a claim that gambling exists), making it a crime, and bringing penalties relevant to the resulting commission of offenses. The expulsion effect is also capable of jeopardizing the prevention of offenses (pursued by actions and rules of public order). The expulsion effect is not simply a reflection of the regional rules (to put it in the words of judgment 300/2011). The expulsion effect, appreciated in its proper "rule of thumb forbidding regulation", becomes a concrete violation of state law, which instead seeks to regulate.

When legal gambling is banned

In 2011 the crowding out effect of anti-legal gaming measures was unpredictable. today, it can't be ignored

GIOCO NEWS APRIL 2014

Because of the counter-action to territorial proliferation of measures aimed at restricting legal gambling, we often have to get confronted with exceptions like, for example, the fact that Constitutional Court already ruled on this matter.

Although we are aware of the existence of a precedent represented by the popular Constitutional Court's judgment 300/2011, about Law n. 13/2010 of Bolzano's County on gaming, we are also aware of the existence of other judgments like Regional Courts judgments or the Council of State decisions, that in contrast with other judgments, have somehow safeguarded the territorial entities' competences. What we are asking, at the same time, is to be conscious about the fact that the subject must be faced by way of highlighting different and important aspects.

What, today, needs to be highlighted is that past judicial records don't take into consideration distorted consequences of anti-legal gaming measures. Among these consequences, the so called crowding out effect of legal gambling within the territory stands out. It consists of a complete restriction of legal gaming within an area targeted by the measure, restriction of which we become aware when we actually implement the distance, laid down by the law, from the sensitive spots identified. This happens because of two reasons: either the banning range spreads across a too wide area or there is an excessive number of types of sensitive spots, to the point where the restricted areas overlie each other, covering the entire target area (being it a municipal, county or regional area). Essentially, the crowding out effect is a concrete prohibitionist consequence that results from the aim of the measure, which simply is the regulation of the legal gaming distribution on the territory. This is absolutely reprehensible, because of the lack of consistency between the local regulations' objectives and the resulting effects. Moreover, it is completely forbidden to limit, at a local level,

neither voluntary nor involuntary, what is allowed by the national legislation. Someone would claim that the crowding out effect, whether known from the beginning, could have probably instilled doubts about what the Constitutional Court stated in the above-mentioned judgment of 2011. The Court affirmed the legitimacy of the anti-legal gambling County Law, because this measure was considered as "*not ascribable to the State legislative competence, related to public order and security; this subject (…) abides by crimes prevention and public order protection*". Moreover, the Court pointed out that not the effects but the law's ratio of the regulation should be considered and "the events in question pertain to situation which do not necessarily pertain to criminally relevant actions".

Probably the Court, pressured on such issue, considered only that the voluntary or involuntary crowding out effect of legal gaming was suitable for favoring the replacement of legal gambling with an offer of illegal gaming that would have answered the existing gaming demand. Maybe the Court should have considered that allowing the entrenchment of illegal gaming offer meant allowing (not stemming! not preventing!) crimes to be committed, crimes that would be reiterated and repeated (from the illegal gambling offer till laundering, from tax evasion for amounts that exceed the threshold of any kind of criminal action on the territory). The Court should have considered such a circumstance not as a simple effect of the regulation, but as a defect embedded in it.

After considering all this, what can we do today to limit such phenomenon? The crowding out effect plays a fundamental role in the controversies about anti-legal gaming measures. It represents a further fundamental aspect to be considered in order to limit such measures.

In fact, the crowding out effect is suitable to affirm that issued measures do fall under the competences that the judicial system assigned to local entities: no legal subject, apart from the State, can assume the power to completely ban the practice of a legitimate activity regulated by the State, within its own territory. It would also be vain to prove that the intention of the authority was to regulate and not to prohibit legal gaming, to safeguard the measure.

In addition, the crowding out effect can become fundamental when dealing with issues of constitutional legitimacy of the presumed regional laws. As an example, we can mention the damage imposed on art. 41 of the Constitution that safeguards the freedom of enterprise. Where the crowding out effect of an anti-legal measure is demonstrable, it is hard not to raise a question of legit-

imacy: in this case, the freedom of enterprise can demonstrably be frustrated because the "burden imposed to private individuals" cannot be considered as proportionate. This effort can be better defined as a radical maiming of business activities, their complete eradication at a local level. In other words, a serious impediment of business freedom, safeguarded by art. 41 of the Constitution, becomes real causing undeniable damages to all the workers in the sector, in terms of ousting their own activities from the target areas and lack of economic return on their investments. Furthermore, administrative law often intervened in order to raise awareness on the issue of safeguarding freedom of enterprise.

Last but not least, the crowding out phenomenon gradually affects a biggest number of territories, not only municipalities but also counties and regions. This is the result of a legislative work which was not appropriately planned, on a national scale, planning which had been appealed by the Balduzzi's Decree, following the parameters highlighted in the previous issues of the magazine. The results of the spread of this phenomenon are creating and will continue to create effects over general interests, which has pushed the legislator to highlight the need of a uniform treatment of this issue over the entire national territory.

Sense of proportion

Anti slot-machine minimum distance measures adopted are not coherent with Balduzzi's decree.. Here is why

GIOCO NEWS MARCH 2014

Some people think that anti-slot machine regulations one "*distance from sensitive spots*" introduced by mayors and governors are compatible with provision of the so called Balduzzi Decree.

Without recalling all the measures adopted by the national legislator, as already discussed in the previous issue of this magazine, we here try to provide the reasons why anti-slot machine measures disregard the *ratio* and the content of said decree.

First aspect: The national legislator wants to pursue the goal of implementing the regulation on "distances" that must: (i) be valid for the entire national territory - and not just for a municipal, county or regional portion of it -; (ii) conceived at a central level, by means of the Government extensions and not at a local level -. The *ratio* is founded on the need to create efficient and uniformed system, valid throughout the State's territory, and avoid the forging of irregular areas.

Second aspect: The national legislator rules that the participation of local authorities to the process of regulating the "distances" occurs by means of the Joint Conference mechanism, as stated in art. 8 of the Legislative Decree August 28, 1997, n. 281, i.e. not by means of free and independent regulatory jurisdictions. In this case, the *ratio* is given by the fact that though the needs of the "*territory*" can properly be interpreted only by Mayors and local Governors, should be taken into consideration only as a mere consultation, in line with the need of a unified treatment of the issue.

Third aspect: The national legislator in the matters of "distances" is willing to impose restrictions only with regards to gaming licenses that have to be awarded at the time of the entry into force of the above-mentioned decree. So, it does not refer to licenses already awarded or to already existing entities. The

ratio has multiple origins: (i) the existing entities ensure a legal gaming offer that covers the entire territory, in order to maintain a high level of control in the fight against organized crime; (ii) the existing entities have already been selected and engaged in a contract with the State, by means of specific rules of engagement and specific tax revenue: changing the rules when the activity is already underway could determine more problems than it could solve. Targeting an entire industry - the industry of legal gaming - when it is in the middle of its activity of recovering the investments made, could give rise to consequences, not only at a business level, but also at a social and occupational level. Fourth aspect, last but not least: The will of the national legislator is the to "*regulate*", not the to "*ban*" the distribution of legal gaming. This statement can seem a commonplace but it represents, actually, the essence of many of the appeals that gambling operators are bringing to the attention of the relevant judges, together with technical evaluations provided for by the experts.

What happened was that, if one were to implement the municipal and regional anti-slot machine measures literally, de facto it would not possible to offer legal gaming activities over any part of the municipal territory. This is the consequence of two situations: either there are too many sensitive spots identified, or the range of disqualification spreading for 300 or 500 meters imposed by the law is too wide. Essentially, anti-slot machine measures are deemed to regulate but, in fact, they ban. Despite all this, the issue could not receive the right attention in the judgments issued so far.

Then, what is there to do? We must continue to point out these aspects which, together with others important ones, can get the right attention of the judicial branch or, hopefully, of the legislation, which would then create clear rules for the operators.

Public gaming and the role of local authorities

The stance of parliament and government over the issue of distances and the role of local authorities in the Balduzzi's decree, before and after its enactment

GIOCO NEWS FEBRUARY 2014

Among the controversies about local restricting measures on the distribution of legal gaming, during the jurisprudential debate the so called Balduzzi Decree was referenced, especially in regard to the issue of establishing minimum distance from sensible locations.

Comments can be mad concerning the evaluation of possible differences between the version written before the enactment of the law and the post-enactment one.The aim is to verify if the Government's (the one who submitted the bill in its original formulation) point of view is different from Parliament's one (the one who suggested some changes only during the session of its conversion into law)

In its previous version, as proposed by the Government, art. 7, paragraph 10 grants the principle of "*exclusive decision-making authority*" to Custom and Monopoly Agency in the field of "*reallocation of gaming activity locations within a network carried out through devices (…)*".

Such principle, which focuses in particular on slot machine devices (or AWP), must be assessed in light of the role assigned to local authorities by the original Balduzzi's Decree:

(i) the end of comma 10 states that the planning power assigned to the Custom and Monopoly Agency "*takes account of (…) any other type of certified information acquired in the meantime, including all the justified proposals issued by municipal, regional or national delegation*".What emerges is that local governments have more than a mere advisory role, however their role is definitely not so broad to reach a pure regulatory one.

(ii) the end of comma 9 states that local authorities can operate by means of

reporting to the Custom and Monopoly Agency "*the following activities (…) the violation of rules related to gaming activities about cash prizes, ascertained by local policemen during the daily monitoring activities, provided for by law, in places designated to the above-mentioned gaming activities*". Even in this case, the local authority's and the police's role, particularly the latter, doesn't seem to have a statutory nature but, instead, it assumes a mere character of verifying the violations of gaming regulations that occur.

Moreover, the decree, before its enactment, affirms that "*the planning applies only to licenses awarded after the time of entry into force of the conversion-law of the decree*".

What comes out from the analysis of art. 10 is that it was deemed:

(i) to slow down future, compared to the present state of affairs, type and licenses of legal gambling, but not existing ones;

(ii) the quantity of existing legal gaming entities is not a real problem, rather they are the base on which one occupy/polices an area otherwise overwhelmed by illegal offer;

(iii) such planning must allow existing activities to comply with its obligations and to avoid unscheduled and non-estimated consequence that would affect operator's business plans and tax revenues.

Additionally, even though there isn't a direct reference to minimum distance, a definition of sensitive spots is provided, which identifies them in primary and secondary educational facilities, healthcare facilities, hospitals and places of worship that already existed at the time of the issuing of the tender. This points out not only that the places are identified precisely and attentively, but also that those places had to already exist at that moment, as clearly stated: this is extremely useful to show that a lot of attention was given to the distributional issues, in order to not undermine the needs of rule of law.

Moving on with the analysis, concerning changes introduced at the time of its conversion into law, notice:

(i) The end of comma 8, art. 7, states that "*The Ministry of Economic and Financial Affairs (…) issues a decree for the gradual introduction of compulsory technical solutions aimed at automatically impeding the access of minors to gaming activities and, in addition, to automatically inform the players about the risks of gambling addiction*". This amendment seems to confirm Parliament's will to confirm the Government's approach, namely that the central authority – in this case through the Ministry of Economics and Finances – has the authority to legislate on the

matter.
(ii) At art. 7, comma 9, the number of inspections aimed at hindering minors form gambling increased from 5 thousand till 10 thousand units, that the Custom and Monopoly Agency is obliged to plan. By modifying such a number Parliament essentially confirmed the above-mentioned principle of "*exclusive decision-making authority*".
(iii) Art. 7, comma 10, points out that the Custom and Monopoly Agency does not have to operate exclusively and individually on planning the reallocation of gaming locations, but must follow specific parameters, listed in the decree issued by the Ministry of Economic and Financial Affairs and by the Department of Health. Once again, the State's authority on gaming is granted and strengthened, this time, also by means of the Department of Health action.
(iv) Still, art. 7, comma 10, underlines that the above-mentioned Ministries issue the referenced decree "*upon prior agreement during the Joint Conference, set forth by article 8 of the legislative decree August 28, 1997, n. 281*". Therefore, at the time of its conversion into law, the role of local authorities has been clearly defined. While the Government, by means of decree, confers the role of informing the central authority of possible problems related to gaming activities registered in the area, only to the Municipalities, Parliament introduces the following: (a) not only Municipalities but also Counties and Regions, have the power to inform the ministries in charge (Financial Affairs and Health) about potential needs related to their own territory; (b) such activity can exclusively take place by means of the procedure established by the Joint Conference, set forth by article 8 of the legislative decree August 28, 1997, n. 281. In other words, without prejudice of the fact that the main authority remains in the hand of the central State, local administrations are allowed to participate to but, exclusively, by means of the coordinated system established at the Joint Conference.
(v) The Parliament then clarifies that sensible spots, referred to in the bill as "*primary and secondary educational facilities (…), healthcare facilities and hospitals (…), places of worship (…) community centers and sports and entertainment facilities*", together with the above-mentioned parameters, need to be further defined by means of another ministerial decree. This means that once again the State is tasked with such competence.
(vi) Finally, the Parliament calls upon the Custom and Monopoly Agency to establish a monitoring center made of specialists, selected by the Ministry

of Health, Education, Universities and Researches, Economic Development, Economic and Financial Affairs, representative of families and young people's associations and representatives of Municipalities "*to evaluate the most efficient measures to fight against the spread of gambling and other forms of serious addictions*", as provided for the last sentence of comma 10 of article 7. Even in this case centralized management is in charge, as in the case of the aforementioned ministries.

In conclusion, this analysis seems to suggest that the Government and Parliament have harmoniously expressed the legislator's will, namely to strongly emphasis territorial needs and wanting to regulate legal gambling, by means of a coordinated central action that is able to satisfy demands of unitary treatment of the matter throughout the entry country.

The territorial issue

Public gaming issue and its regulation at the local level is one of the most debated subject in these days. both at a political level, among parliamentarians, and at an institutional level, with all of its pending proceeding in various administrative regional courts

GIOCO NEWS JANUARY 2014

When talking about the allocation of legal gambling throughout the territory, one of the most common issues brought before the Administrative Courts responsible for the evaluation of the validity of restricting acts, is linked to the demonstration of damages inflicted because of those acts.

One of the most common claim is the loss of revenues. The removal of devices or the restriction of legal gaming activities are issues suitable for determining the lack of revenues of a local business, on one side, and of the satellite activities, on the other, because such revenues, generally, follow parameters based on percentage of gaming activities.

Other times, what is pointed out are issues concerning the start-up clients or the customers' losses. In fact, being the restrictions scattered unevenly over the territory, customers will have the possibility to access gaming offer in neighboring areas, not affected by the restrictions or access alternative channels offering gaming activities, like on-line supply. This kind of circumstances also cause the occurrence of the so-called phenomenon of gaming-led tourism.

Such a phenomenon is not only a matter of future loss of revenue (I now stop receiving income created in the future), rather it is also an issue of current losses (i.e. how much I lose now with regards to how much I have now). This is true if we consider the negative effects on the goodwill of a business not in a matter of an intrinsic value of someone's business (made up by the expectations of generating income in the future), but rather as a real accounting post traceable in the balance sheet, listed as a specific price paid for the acquisition of the company.

When the *deminutio*, caused by the restrictions, reaches an important value,

even in terms of quantity, if compared with the total turnover of the operator, it becomes immediately evident that it can jeopardize the survival of the business. Indeed, the loss of gambling revenue is certainly linked to the loss of liquidity of the same business, something that is negatively affects not only the economic (i.e. the suitability of the revenues to hack costs) but also the financial stability of the business (i.e. the suitability of cash-in flows aimed at allowing payments upon deadline). Evidently, the economic and financial imbalances can assume such a dimension that they can engrave on the simplest *spending review*'s politics, till compromising any adjustment of the levels of employment, until the enactment of the above-mentioned restrictions.

Of course, each one of the above described circumstances loses the value of mere petition of principle and assumes the value of juncture deemed significant, only when, by means of financial reports, the appraisal of the *quantity* and the *size* of the problem can be verified. Furthermore, it is not of secondary importance acknowledging the seriousness of the economic crisis gnawing the country.

Therefore, beside the simple loss of revenues, which never assume a positive connotation - unfairly, the profit-making expectations are required by a business activity – other reasons are given in terms of a strictly private perspective social nature aspects (especially the safeguard of levels of employment) and un-refundable and unsolvable perspectives, such as the slowing or shutting-down of business, the latter not necessarily *in boins* especially when the law places sudden and unforeseen bans.

It must be highlighted that both the general scope of the restrictions, on the one hand, and the legal gaming's ousting from the entire territories targeted by the restrictions, on the other, are suitable for determining more important side-effects than the ones claimed by every single claimant; here, in fact, general economic interests of various kinds play an important role.

Firstly, we are forced to recall that the financial hardships, all the way to running out of business with its consequent impact of employment for a single individual, in reality concerns an entire industry.

Secondly, we must recall the crowding-out of any kind of financial investments in the areas targeted by the restrictions by legal operators of this sector, with all the evident consequences on the local employment level.

Thirdly, we must mark the loss of the State's revenues, in a moment like this one, when the crisis that affects the country is at the center of local and na-

tional attention.
Finally, there's the actual risk that the organized crime may become interested in the gaming distribution in places where legal gaming activities have been banned, order to answer to the existing gaming demand. What would strongly be affected by these phenomena is the fight against illegal gambling and the safeguarding of the customer/gambler.
All these evaluations are important because, together with others, allow to focus on the magnitude of the issue of restrictions scattered throughout the country, that can't and doesn't has to be considered as a problem of private operators but, instead, as an issue that must be solved for the common good.

Gaming and territory, let's clear things up

The theme of public gaming and its integration in the territory is one of the most important matters for the sector

GIOCO NEWS DECEMBER 2013

Like all operators in the sector, ACADI dealers are sensitive to, and have repeatedly informed the Institutions with regards to issues related to proliferation of regulations, issued by municipalities, autonomous provinces and regions, which, outside of a specific state law restrict, detrimentally, legal gaming.

To highlight the magnitude of this phenomenon, just remember that the limitations that recurrently occurred in the areas essentially concern: (i) the impediment of the establishment of legal gambling within certain distances from sites deemed sensitive; (ii) time limits for opening and / or activating legal gambling; (iii) the introduction of even more stringent advertising bans.

It should also be noted that in every locality measures, limits, criteria, sensitive places, times and prohibitions are generally imposed differently in different places, and often the limits are set in such a way as to prevent the distribution of legal gambling in every corner of the territory, as demonstrated by expert inquiries conducted on numerous measures.

The importance of the situation should be noted by highlighting some paradoxes regarding some of the limitations preventing the fulfillment of the licensed activities. It is sufficient to look at some examples recorded in Genoa's municipality, which has adopted the known regulation on the escort of the Law of the Liguria region.

In this case, the distribution of various forms of gambling is largely prevented from 19.30 onwards and, for betting halls, this prevents the object of the concession from being carried out, since most horse racing events held in the summer are done at night.

Again, in Genoa, the current wording of the regulation provides that even for

the replacement of gambling equipment, it is necessary to require an authorization from the municipality, which in all likelihood will be systematically denied since, as it is formulated, the rule is constructed so as not to allow the distribution of gaming in any corner of the city. Consequently, where the national legislature requires the operators to replace existing devices with other, more sophisticated and safer than the existing ones, this "imposed" activity from the concession would not then be authorized.

Finally, also in Genoa, a ban has been placed on the advertising of legal gambling halls which is not reflected in the national legislation, which instead permits advertisements, even with all the relevant *caveats*. And with the paradoxical consequence that if an operator can access a national media to propose their own advertising (like a national television channel) there would be the problem of obscuring the TVs in that territory.

Among other things, these effects add to the already known ones, such as private interests of the whole supply chain (sales cuts, cost unsustainability, closures, dismissals), but also to publicity and general issues such as the needs of Public order (for the vocation of organized crime to satisfy demand in areas not occupied by legal gambling) and revenue requirements (for the drastic and imminent decline in the collection).

The Association's awareness campaign was also complemented by a series of judicial initiatives carried out by adherent and non-adhering companies operating in the sector, in order to ascertain before the competent judicial offices the legitimacy of the acts issued in the territory. The case concerns measures of local authorities adopted by the municipalities, independently or covered by regional and provincial laws.

Well, for the first type of action (municipal measures adopted without a regional or autonomous province law), the appeals of some operators have come before the Constitutional Court, which, when pronounced, will definitively mark the direction to be adopted that currently sees a split in the jurisprudence.

For the second type of initiative (adoption of municipal measures on the basis of regional and / or autonomous provinces laws), the appeals of the operators are still at a preliminary stage, and in some cases the jurisprudence has held that it does not have to submit its exceptions to the Constitutional Court.

In a sea of decisions, however, there are numerous regions that are adopting or undergoing regional law projects with ever-different content and in any case

in contrast to the parameters of the national law.
Another important point is that in many cases the Customs and Monopoly Agency has intervened in some of the judgments raised in support of the applicants' arguments, in particular regarding the protection of the general interests of public order, security, the need for unity in the territory, and the need to respect essential health standards at national level. And this fact is all the more relevant when considering that the Customs and Monopoly Agency is not an independent authority but a direct emanation of the Ministry of Finance, and therefore of the Government.
The need for clarity on roles and competencies therefore remains a further confirmation of this conflict at the institutional level, which obviously must to be resolved as soon as possible, without demagoguery or uncoordinated initiatives that cause more damages than solutions.

Bolzano, Genoa and the risk of a domino effect

Between tar judgments and new regulations, the conflict between local and national rules is more intense. and uncertainty dominates the sector". Let's go to the center of the problem with a sense of responsibility

GIOCO NEWS MAY 2013

Perhaps there will be a better time to comment on last week's rejection ordinances issued by Bolzano's TAR, which refer to a council dated April 10th and which are without motivation.

In such a deep period of crisis in the country, it seems preferable to focus on the substance of the problem involving thousands of workers and businesses, to invoke the right responsibility that law makers expect from all the institutions in whose service they work.

Bolzano is one of those Italian municipalities that has decided to drive / ride the anti-slot machines campaign, setting additional and more stringent limits than those already existing and provided for by national law. The limits are the prohibition of supply gambling through AWP and VLT at a certain number of meters from certain sensitive sites. The reasons given by the city are regard the protection of susceptible groups from pathological gambling.

Sure, some wonder how this effectively deals with the intentions described and whether the prohibition of installing at a certain distance, or if the list of sensitive locations really contains places where there are vulnerable subjects. But regardless of this, the focus is to check whether Municipalities, Provinces, even autonomous ones, or Regions, even special administrative regions, can intervene in regulating gambling, replacing national legislation, setting further and more stringent limits on the distribution of games, in addition to the regulations that have been drafted at the national level. Legal practitioners, who are involved throughout the national territory after having confronted the most diverse local measures, have come to the conclusion that there are

clear requirements of uniformity, highlighted on several occasions by the legal system itself, by a Part of the jurisprudence and in some cases also by the administration responsible for regulating and controlling the sector.
The need for unity of treatment, coordination between the measures taken, lies in the fact that the unintentional creation of areas where legal gambling is banned must be avoided, leaving an open field for illegal gambling, or that the spread of gaming is overly facilitated to the point of causing imbalances in the containment of ludopathy.
The legal system has always highlighted the need for homogeneity of treatment in the territory of the state, and it is no coincidence that there are several cues that point to exclusively reserving the matter to the state. Then the so-called Balduzzi decree intervened, taking into account the unanimously shared need to control the phenomenon of ludopathy. Indeed, it has in fact added a precise criterion for planning the distribution of games on the national territory at the central level and empowering the Ministry of Finance, Ministry of Health and Customs and Monopoly Agencies.
But the Balduzzi Decree is very important for two reasons that perhaps at first analysis may appear to be subtle, but in fact clearly describe the will of the legislator (attention, of the legislator, not of the government) to point out once and for all on the question of distribution of gaming on the territory.
And in fact, in the text eliminated from Parliament, the decree safeguards the need to keep in mind the *wishes* of the territory, of local authorities and the regions, but at the same time clarifies that this function is not realized through the assignment of a direct regulatory power not through legislative one, but it is ensured through the search for a consensus to be agreed at a Joint Conference, thereby safeguarding the primary need of uniformity.
This is the first aspect. The second is then applied to the scope of application of the measures introduced. Some have also said that in fact the Balduzzi Decree has left a legal vacuum by providing the discipline only for concessions still to be assigned. But it could be argued, excluding an oversight that would be clearly unjustified, that for the concessions already granted the analysis has been carried out, and that the existing distribution is not only just but necessary or at least functional to the offering of legal gaming by the state, controlled and regulated as a measure of clear contrast to the illegal gambling offer. All this, without mentioning that this mode of action also safeguards the rights of the legal practitioners that have participated and have had a conces-

sion granted, which should also be consider at when balancing interests.
Here the merit of the story is that anyone, with the vision of a third party without interest and without the need to sensationalize the situation, is able to evaluate it at least as controversial.
Now in the case of Bolzano, upstream to the municipal measures, there is a law of the Autonomous Province which moves the competence to assess the recalled requirements of unity before the Constitutional Court. The point is that, as everyone knows, in order to discuss before the Constitutional Court, it is necessary for the Regional Administrative Court to assess the relevance and the non-manifestly unfounded issues of constitutional legitimacy raised, of which the requirements of unity is only one of it. The Tar on some occasions chose not to pronounce itself, as in the case of assessing the measures adopted by the Municipalities in the execution of Provincial Law, which did not immediately harm the applicants. This choice, which leaves room for criticism from a strictly procedural point of view (the measures have been detrimental to at least all those who have decided to execute the removal order), also perceives that the delay of an evaluation by the Constitutional Court certainly does not play in favor of the legal order and its demands for certainty, and to those who should do so in the territory, citizens, players, workers and companies in the gambling sector. And this conclusion is reached above all by analyzing the behavior of the Communes that, on the one hand, urges to remove the equipment, to respect the county law, and on the other states that it is purely informative matter, and that the law does not impose a real prohibition, but that it only grants the power to remove the gaming equipment. Hence the bewilderment of those who want to be respectful of norms and those who invoke the need of certainty.
For this reason, legal practitioners look confidently to the positions taken in the proceedings and the fact that the Constitutional Court is inclined to deal with this issue once and for all, reviewing the 2011 decision of the Court itself, compared with the above-mentioned Balduzzi Decree. The Tar of Piedmont for a matter time restriction has already taken its decision to appeal to the Court.

The war of slots

Jurisdiction is evolving

GIOCO NEWS APRIL 2013

From yesterday, it was TAR Lombard's decision to, confirming the content of the inaudible decree, alter the part issued in recent days, to suspend the effects of the ordinance by which the City of Milan had decided to lay down further and more stringent limits, in this case of times of business, is already more than regulated legal gaming compartment.

What is interesting is the content of the motivations.

The Court decided to leverage the fact that the decision of the City is lacking in terms of motivation belief that "the motivation placed by the municipal foundation not fully grasped the Ordinance ("adaptation of legal provisions and changes already adopted by previous special measures"). It appears neither sufficient nor adequate to justify the prohibition of carrying out the activity during night hours." In this case, the judges point out that, insofar as a local administration has a restriction, this must have a foundation and that such a foundation should arise from the fact that the restriction is appropriate to pursue the purpose of the administration's local aims. In other, more simple terms, the judges have not found the necessary link between the requirement represented by "adjustment to the law provisions and changes already adopted by previous special measures", on the one hand; and the tool identified by the "unwinding prohibition of activities during the night hours" on the other hand.

In the TAR Lombardy Order one reads, then, an interesting passage in the assessment of how much the municipalities are allowed to use the powers referred to in Article 50, paragraph 7 of the Consolidated Law on Local Authorities, to limit the legal field of the games. In particular the TAR, without taking into account that "it seems doubtful that the exercise of the power to order in art. 50, paragraph 7 of Legislative Decree no. 267/2000, preordained to harmonize "the performance of services with the overall and general needs of the users", may constitute a secure legal basis for the purpose indicated

by the Defense Administration (livability of the city districts, see. P. 13 of the article of 8.3.2013) ".
Finally (and this is what really affects favorably without detracting from the two points highlighted above) it is clear that the TAR Lombardia "sees a severe and irreparable injury from possible dismissal of employees specifically employed to ensure the performance of the service during the scheduled time of opening". This sensitivity demonstrated by the judges of Milan, especially in times of crisis like the one we are experiencing, is important. It is good that it also be taken into account also in other judgments, (where unfortunately there was a certain resistance to its being identified as a truly important problem) that workers and companies in the gambling sector are forced to face the numerous, disparative and restrictive measures left by the initiatives of local and regional authorities.
The merit of this dispute is set for 23.10.2013 but in the meantime other contributions to the case of law could be made that will be closely monitored.

New slots and limitations of the communes: from the tar of Lombardia come important principles for jurisdiction

GIOCO NEWS ONLINE MARCH 15, 2013

Yesterday, the Tar of Lombardy resolved the measure that, confirming the content of the unheard decree, alters the part of what was issued in recent days, ultimately suspends the effects of the ordinance by which the City of Milan had considered imposing further and more stringent limits, in this case on the hours of operation, on the already more than regulated legal gaming compartment.

Of special interest are the contents of the motivations.

The Court made leverage on the fact that the decision of the City is lacking in terms of motivation believing that *"the motivation given by the municipal administration has a foundation with the applied Ordinance (" adaptation of legal provisions and changes already adopted by previous special measures ") appears neither sufficient nor adequate to justify the prohibition of carrying out the activity during night hours." In this case, the Judges point out that, insofar as a local government has a limitation, this must have a basis and that such a basis must arise from the fact that the limitation be appropriate to pursue the purpose of the administration's local aims. In other and more simple words the Judges have not found the necessary link between the requirements represented by "adjustment of the law provisions and changes already adopted by previous special measures",* and the tool identified as the *"unwinding prohibition of 'activities during the night time «.*

Within the Tar of Lombardy Order we read, then, an interesting passage in the assessment of how much the Municipalities are allowed to use the powers referred to in Article 50, paragraph 7 of the Consolidated Law on Local Authorities, to limit the legal field of gaming. And in particular the Tar, without sparing punches, clears up that *"it seems doubtful that the exercise of the power to order in art. 50, paragraph 7 of Legislative Decree no. 267/2000, designed to harmo-*

nize «the fulfillment of services with the comprehensive and general needs of users», can constitute a sound legal basis for the pursuit of the purpose indicated by the Administration›s defense (citizenship viability, see p. 13 of dell'8.3.2013 memory) «.
Finally, and what really has a favorable effect without detracting from the two points highlighted above, is that the Tar of Lombardy *"sees a severe and irreparable integrated injury from possible dismissal of employees specifically employed to ensure the performance of the service during the scheduled time of opening*". This sensitivity demonstrated by the judges of Milan, especially in times of financial crisis like the one we are experiencing, is important and it is good to be taken into account in other judgments as well, where unfortunately there is a certain resistance to identifying really important problems that workers and companies in the gambling sector are forced to deal with by facing the numerous and inhomogeneous limitative measures left to the initiatives of local and regional authorities.
The merit of this dispute is set for 23.10.2013 but in the meantime other contributions to the case of law could be made that will be closely monitored.

The need for a unified treatment of the issue

GIOCO NEWS MARCH 2013

"THE *so-called anti-slot measures issued by the Municipalities of the Autonomous Provinces of Bolzano and Trento and both the regions of Liguria and Piedmont, although they differ in terms of content and which law they are based on, are all bound by a clear red thread*".
Indeed, in all of the aforementioned cases, legal gambling operators are strongly asking to clarify whether the rules on the distribution of legal gambling should be dictated at national level, or whether local authorities can further legislate and define what is permitted and what not.
The question is: is there a need for a unified treatment of the issue across the nation? Or more precisely, are there or not needs of public interest that suggest that differences and imbalances on the matter across the country should not be created?
In some cases, the administrative jurisprudence has already acknowledged to some extent the possibility of the national legislator to claim the competence on matter for itself. Moreover, the legal system has also clearly signaled such position, particularly with the provisions of the recent Balduzzi Decree.
But in the said cases an extra effort is needed, the Constitutional Court must take a stand. Even if in the past this issue was given traction to in the meantime inputs proposed by the legal operators have increased.
A first defining moment on the matter will be when dealing with time restricting provisions, and thereafter, if deemed to be protected by the relevant court, another turning point will be the question of minimum distances measures.
In all of this, it is of great comfort the awareness of the regulatory body, the Customs and Monopoly Agency, which, in some cases, has already shown to agree with the idea of the need for a unified treatment of the issue, or at least a supervised, reasoned and homogeneous way throughout the entire country.

Antislot orders and regulations, what will the next thing be?

GIOCO NEWS OCTOBER 2012

AS parliament continues to change the Balduzzi decree, the courts continue to have their say on the appeals of gaming operators, who are mostly affected by the consequences of the restrictive measures imposed by the local authorities.

Among the most recent ones, it is worth pointing out a pronouncement on measure of Pioltello's municipality of Lombardy's TAR, according to which the competence of municipalities is doubtful in the absence of a precise legal basis, and on the Tar of Piedmont pronouncement concerning the municipality of Rivoli, which has considered raising a question of the constitutional legitimacy of certain norms.

But let's proceed with order.

A few days ago, and before the text of the Balduzzi Decree circulated, the Tar of Lombardy agreed with the recurring operator and issued an order to accept the suspensive request for another so-called anti-slot regulation, giving an "Important motivation that is worth sharing in its nuances".

The measure is interesting for the two affirmations contained.

On the one hand, there seems to be a new point in favor of the case-law in which we believe that "it seems doubtful that the municipal administrations have the power to adopt (...) special regulations with restrictive provisions for the establishment of said activities, in the absence of a specific legal basis. " And the conviction increases if one takes into account that this statement comes just after the appeals have reviewed the provisions usually adopted by the local authorities for the issuance of the resolutions, including that article 50 paragraph 7 of the TUEL that is the object of Piedmont's TAR ordinance discussed below.

On the other hand, the decree reaffirms the dubious competence of the municipal administrations" in the field of gambling, given that the constitution-

al jurisprudence has valued the possible, concurrent protection of subjects deemed most vulnerable, the young or in need of health or welfare care, "and to" prevent so-called compulsive gambling "(judgment No. 300 of 2011). And clearly, this elucidation helps to clarify the scope and weight of the recalled judgment of the Constitutional Court to the point of defuse it in case of measures without a punctual legal basis.

This circumstance represents another small step in the direction we share, according to which the current legal order (even before the release of the Balduzzi decree) vociferously invokes that the phenomenon be managed without creating areas where uncontrolled prohibitions can be spread, which could cause unpredictable outcomes on public order as well.

When it comes to the decision of the Tar of Piedmont, it is worth recalling that the constitutional legitimacy of TUEL's rules and liberalization has been raised, since the latter does not foresee local authorities' competence in halting gaming and the phenomenon of ludopathy.

But the aspect that I think must be valued is that in all the premises of the ordinance the Board acknowledges, on the one hand, that the competence of the local authorities does not exist for many of the reasons we usually present on the subject (and which we will therefore reiterate with further conviction) and, on the other hand, takes note of the now-copious jurisprudence on this subject (finding numerous measures that have affected us).

That being said, the impression is that, unlike what is stated in the ordinance, the legal order focuses on the theme of ludopathy and tries to deal with it, in line with the constitutional principle of health. At the same time, it has chosen to grant the State the management of the phenomenon, in line with the need of a unified system. All this, is well-substantiated by the legislator with the recent Balduzzi decree.

It will also be possible to discuss about similar proceedings in which it will be asked to suspend the denials precisely because same Board, in its premises, has recognized the reasons for the appeal and the cases law in favor of it.

But the outcome of these further attempts and the evolution of the case law obviously have to wait for the next "episode" of this saga…

Bolzano (as in the case of Liguria Region) goes against legal gambling but risk to committing a violation: the European Commission has the floor

GIOCO NEWS ONLINE OCTOBER 12, 2012

ON 22.11.2010 the Autonomous Province of Bolzano enacted the Law n. 13/2010 which set limits to the so-called "gaming room operating" and to "legitimate gambling". This law introduced the following changes:

(i) Law 13 of 13.05.1992 (Public Speaking Legislation), with the introduction of art. 5a, in accordance with which *"1. For reasons of protection of certain categories of persons and in order to prevent gambling addiction, the authorization (…) for the opening of gaming and amusement rooms cannot be granted within a range of 300 meters from any type and level of school facility, youth centers or other institutes attended mainly by young people or residential or semi-residential operating in the field of health or socio-assistance. The authorization is granted for a period of 5 years, and may be renewed after it expires. For the existing authorizations, the five-year term will begin from January 1, 2011. 2. By resolution of the Provincial Executive Council, further sensitive locations in which the authorization cannot be granted may be identified, given its impact on the urban environment and urban security, as well as problems associated with road traffic, noise pollution and public peace disturbance ";*

(ii) Law 58 of December 14, 1988 (Public Business Law), with the introduction of art. 11, comma 1-bis, *"Even lawful games cannot be made available within a range of 300 meters from any type and level of school facility, youth centers or other institutes attended mainly by young people or residential or semi-residential operating in the field of health or socio-assistance. The Provincial Executive Council can identify further sensitive locations in which gaming cannot be made available. "*

As it is well known, the Office of the Prime Minister had immediately re-

quested the examination by the Constitutional Court, raising the question of the legitimacy of the modifications, since they go against art. 117, second comma, letter h) which states that *"The State has exclusive legislative powers in the following matters: (…) h) public order and security, with the exception of the local administrative police"*. The Constitutional Court has declared as unfounded the issue legitimacy, by judgment n. 300 dated 9/10/2011.
Recently, the issue of the alleged inapplicability of the Provincial Law of Bolzano n. 13/2010 apropos of the presumed violation of the obligation of pre-emptive notification to the European Commission, as provided for by Directive 98/34/EC, which relates to new technical standards and regulations apt to create market restrictions. To that end, a separate investigation by the European Commission has recently been launched, with the scope of verifying the actual violation of the Directive. On that note, we are in contact with the relevant office in Brussels, which always inform us of the latest development on the matter. It is worth recalling that the same procedure has been initiated with respect to the restrictive order as per Liguria's Regional Law of 30.04.2012.
Lastly, it should be remembered that on 4.10.2012 the Provincial Council of Bolzano approved the draft legislation n. 136/2012, whose definitive text is yet to be known and will shortly be published on the Official Bulletin of the Region, which amended Law 58 of 14 December 1988. The latter do not specifically address gaming rooms, but deals more generally with lawful gaming. In particular, the measure grants specific powers to the mayors:
(i) *"to mandate at any moment the removal (…) of lawful gambling in contrast with the article 11"* (i.e. *"available within a range of 300 meters"* as previously described);
(ii) to suspend, *"in particularly serious cases, the business activity until his removal";*
(iii) applying a sanction of a minimum of 144 to a maximum of 552 euros for anyone that *"does not remove (…)lawful gambling in contrast with the article 11"* (i.e. *"available within a range of 300 meters"* as previously described).
Sources say that, while approving draft legislation, it seems that an amendment that would avoid the immediate removal and would also introduce a transitional period had been approved. The amendment's wording is not yet known, and we should evaluate it only after having seen them.

Gambling divides and (does not) conquer

GIOCO NEWS OCTOBER 2012

Piemonte, Veneto, Trentino, Lombardia: a long way of the Cross for legal gambling, which has to juggle between a series of local decrees, ordinances and regulations. However, after a long legal battle the jurisprudence seems to be moving in the direction of taking the legal gambling operator's side.

The recent ruling of the Tar of Piedmont concerning the appeal against measures enacted by the City of Rivoli, which provided for minimum distances and time restrictions for gambling halls, has created a lot of turmoil. In particular, it raises doubts over the question of constitutionality of the rules that govern local authorities and their applicability to the sphere of "public gambling". However, there is also some good news regarding this verdict. For this reason, Gioco News asked Geronimo Cardia, a renewed lawyer specialized in legal gambling and public concessions, for a comment. "The reading of the document - the lawyer explains – points out that the Tar raises a question of constitutional legitimacy of TUEL's provisions and laws concerning the liberalization of gambling, which do not foresee local authorities' competence to tackle ludopathy, though it reaches such conclusion on grounds we do not agree on". "Furthermore, in order to argue for the question of constitutionality – and again by adopting a reasoning that we do not share - the Board states that the Balduzzi decree does not help solving this case because the decree would only govern future concessions and not current ones".

Nevertheless, according to Cardia the most important aspect on which one should focus on is that "in the text of all of the ordinance's premises, the Board openly recognizes that currently local authorities do not have the competence over the matter due to some of the same reasons we usually base our appeals on (and we will therefore reiterate them with further conviction), and it also takes note of the now-copious jurisprudence on the matter (including numerous measures we dealt with). So, in regards to the first issue (if there is

a question of the constitutional legitimacy of TUEL's rules that do not grant local authorities the competence over the matter), I have the impression that it is necessary to state that, unlike what is stated in the ordinance, the legal system focuses on the theme of ludopathy, and deals with it via the constitutional principle of health, and that such decision is based on the constitutional principle of the need for the unified treatment of the matter by conferring to the state the management of the phenomenon. And for that purpose (and here we come to the second issue), the Balduzzi decree is useful in so far as it actually confirms such trend, and also by clearly signaling the way forward with regards to the evaluation of which further actions should be taken. We will be able to discuss all of this in the near future, with respect to similar proceedings whereby we propose the suspension of its denials, due to the fact that the Board itself recognized the grounds of the appeal and the case-law is also in favor of it".

But the current legal status of the legal gambling equipment sector should be assessed from a wider angle. For example, a few days ago, and before the text of the Balduzzi decree started to circulate, the Tar of Lombardy issued an order that accept the suspensive request of another "anti-slot" measure, this time enacted by the City of Pioltello, offering us an important motivation that is worth sharing in its nuances. "The measure - says Cardia - is interesting because of two statements contained in it. Firstly, there seems to be a point in favor of the jurisprudence that is also in line with what we believe in, namely that "it seems doubtful that the municipal administration has the power to adopt (...) special regulations containing limitations for the establishment of said activities, in the absence of a punctual legal basis". Furthermore, this statement comes just after having reviewed the provisions on which usually local authorities base their regulations on, including Article 50, comma 7 of the TUEL, which is the subject of the Tar of Piedmont ruling we already discussed about. Secondly, the Tar of Lombardy reiterates the dubious competence of the Municipal Administrations, albeit in the field of regulating gambling activities, the constitutional jurisprudence has expressed the possible concurrent competence for the protection of the "most vulnerable subjects, either for younger age or because those in need of healthcare or social care, and this in order to prevent so-called compulsive gambling (judgment no. 300 of 2011)". With this clarification, "the Tar of Lombardy contributes to clarify the scope and weight of the recalled judgment of the Constitutional Court to the point of

unleashing it in case of municipal measure that lack of a punctual legal base". According to the lawyer, the following passage is very important: "This circumstance - he says - represents another small step in the direction we share, according to which the current legal order (even before the release of the Balduzzi decree) loudly expresses and advocates for a management, even at the local level, that deals with the phenomenon that takes into consideration the need for a unified treatment of the matter, without creating areas in which uncontrolled prohibition may arise, which can create unpredictable consequences on public order as well."

But that's not all. Quite the contrary. The ultimate front for the battle against local regulation and for public gaming is in the city of Trento, where a Provincial Law has been invoked by the various municipalities in the area and in respect of which the Regional Tar has called for the administration (the case in question if the appeal against the decision of the Municipality of Riva del Garda) to "better identify the so-called" sensitive locations "and to reduce its number and also to adequately motivate, as stated in the ordinance, the identification of the "circumscribed" ones as per comma 2 of art. 13bis of the Provincial Law of Trento. We will know what is going to happen in November.

The letter of the Internal Minister to the mayor of the municipality of Vicenza

(ARTICLE NOT PUBLISHED) SEPTEMBER 2012

I have read in these last few these days some interpretations of the letter from the Minister Chancellor to the Mayor of Vicenza, which prompt me to intervene and explain for the sake of clarity.

It is clear that in order to open a room that provides legal gaming, there must be a state grant that legitimizes and empowers a person who, for convenience, is called a concessionaire. It must be a legitimate assignment that confers on a local operator the proper title with the power to act within the territory on behalf of the concessionaire. This is a provision of article 88 of the TULPS, normally issued by the police, along with a whole series of other permits issued by various authorities (from firefighters to the health department, etc).

It is evident and clear to all, from legal operators dealing daily with these issues, that for each of these steps there is a need for certain requirements because for each of these "documents" the legislation intended to pursue different purposes protection of citizens and businesses themselves.

For the last few months, for some reason that some curious person may study more thoroughly, it happens that several local authorities, as well as autonomous provinces and regions, have taken the initiative to add to the rules and constraints already imposed by national legislation. These are extra limitations to legal gambling with the most disparate measures: there are those who set the time limits for the opening of the premises, those who set time limits for switching on and off the equipment for the provision of the game, those who forbid opening at certain locations and those who limit the availability of permits. The shadow of the possibilities then becomes wider only one takes care to observe the motives given in the various measures. One can then discover that besides the protection of the weak measures, there are also motivated measures to limit traffic in the city, to ensure public quiet etc.

Many of these local government measures have been contested and many of these have been suspended or revoked by the various competent territorial courts.

The point of a certain circular is that before April, the Ministry of the Interior found itself in numerous circumstances directly involved in the appeals process of the local authorities' measures to have the Police Headquarters, before the commune, in the phase of issuing the license of art. 88 of TULPS detected and applied the presence of interfering measures of municipalities. As has always been pointed out in the appeals made on behalf of the legal practitioners, and as clarified in the circular, the purpose of Article 88 essentially consisted of the verification of subjective requirements and public policy oversight; and suggests wisely to the local authorities and in any case to subjects authorized to issue licenses under art. 88 to tread lightly whether or not there are further interfering measures.

The fact that the Police disregard such local authority prohibitive measures means (a well-known fact to all operators) that municipalities and local authorities are forced to fulfill their responsibilities: if the measures are illegal and are canceled or suspended by the courts, responsibility for damages caused to local operators by unlawful seizures must be identified by the local authorities themselves, and not by the police which protect the public order. On this the words of the letter of the Minister are clear, "otherwise, the Interior Administration Offices would expose themselves to its litigation and consequent claims for damages arising from any license denial for failure to follow municipal regulations".

The Regions backs away, the Government swerves

Liguria wants to regulate public gaming autonomously; the government chooses not to intervene. Now what?

GIOCO NEWS JULY / AUGUST 2012

In recent days, reports were circulating that the government decided not to oppose yet another regulation, the so called *"anti-slot"* measure, which has been wanted, conceived and enacted by the local government though completely at odds with national law.

The first thing that should be discusses is that, in this case, the regular level of attention should go up since we are dealing with a Regional Law, therefore its impact falls on a much wider range of territory than usual. Hence, in this case all the concerns that we normally voice against municipal anti-slot are greatly amplified.

That is why this time we must talk about the dangers to an entire sector and not just of problems for business operating in one specific municipality, to the stability of many workers such as those in the industry across the region, to the loss of tax revenue, which will be instead computed on a much higher number of businesses that will not be able to open. This will pave the way for crime to supply a demand that, as even stones now know by now, does exist. So, it is one thing if an unjust ban crystallizes in a small town, while it is a whole different story – a serious one – if you allow the crystallization of a ban, especially if proven to be unfair, on a large area such as an entire region.

After this outburst, which I decided to publish because I believe it is useful to highlight the width of this issue, and the consequences that can impact such a large number of workers, people and families. I will now proceed to briefly focus on the law.

Liguria Regional Law, April 30, 2012 n. 17 Published on the Official Bulletin of the Region of Liguria, Part I, of May 2, 2012 n. 10 (hereinafter referred to as "Law") contains the *"Gambling halls Framework."*

Apart from the fact that, even if this aspect is not that important, the title of the Law itself, namely *"Gambling halls Framework"* appears to be very ambitious compared to actual regional powers (knowing that rules concerning gambling halls, as of today, can be found in law enacted by the national legislator). I believe that it is useful to highlight the region's objectives because they are the basis for justifying a legitimate intervention by a local body to the detriment of the national legislator. In other words, it is about finding what prompted the regional legislator to feel legitimatized to overstep the national legislator. The manifested interests are the following: *"The present Law, within the powers accruing to the region in the field of health and social policies, lays down rules designed to prevent gambling addiction, although lawful.* "

And here the questions arise. While on the one hand the regions clearly have competence in the field of health and social policies, on the other hand, the first question that concerns us is the fact that the region has decided to prevent "gambling vices, even if lawful".

Mind that, we are not asking for the proof of the seriousness of the situation that lead to the creation of said measures, although it could be necessary. What we are saying is that it is wrong the affirm that *"we will prevent gambling vices even if gambling itself is lawful"* by means of prohibitions that we will be discussing. It is wrong in the first place because gambling addictions, as also admitted by the region, originate from illegal gambling. And addictions that originated from access to the illegal gambling will not be prevented by prohibiting lawful one! By banning legal gaming, we incentives the spread of illegal one and all of the bad habits connected to it. The reason why state sets the rules is not only to make money, but first and far most to ensure clear rules, and that bets and prizes are not too exaggerated. Banning it means pushing players towards illegal activities, which yes, they will create vices.

Let me also state that, because of its stringent criteria, legal gambling does not generate gambling addiction. This concept has also been crystallized by judges and cannot be ignored (see Umbria's TAR judgment of 20/2012 on the appeal of the anti-slot measure of Bastia Umbra's municipality). The national legislator has been involved for years in the fight against pathological gambling by means of regulations: he has abandoned the prohibitions approach years ago.

But it does not end here, because the region's objectives are also other, each of which raise many doubts. In particular, when the region affirms to stand for

the *"Protection of certain categories of people",* one wonders if said protection can actually be carried out by banning the opening of gaming rooms close to the places attended by those same subjects deemed to be protected, particularly in the case of schools, which are known to be attended by minors, when the law (National) already prohibits them from accessing to it.
Further doubts arise for the following objective "(...) *contain the impact* (...) *on urban safety, traffic, noise pollution and public peace",* since it is not clear how a room reserved to adult players can create more traffic or more noise than other venues such as discos or, why not, even restaurants.
But the biggest dilemma is: can these concrete reasons alone trump national legislation? And if so, do they exist across the entire region?
Moving on with the analysis, other doubts and concerns emerge not so much from the fact that the municipality must issue an authorization as per TULPS (Consolidated Law on Public Security – even if the verification of skills compared to activities carried out by the police under Article 88 TULPS must to be verified), but rather because:
(i) the authorization is not granted in case of a location within 300 meters range from a series of places that are not defined with certainty, giving municipalities an excessive discretionary power. Consider that (a) it references *"educational institutions of all levels, places of worship, sports facilities and youth centers or other institutes attended mainly by youth or residential or semi-residential health or social care facilities, and also accommodation facilities for protected categories* "; (b) the municipality is then given the opportunity to identify as it pleases other sensitive sites taking into account *"the impact (…) on the urban environment and security and the problems associated with traffic, noise and disturbance of peace* ", which potentially could occur throughout parts of each municipality of the region. It would not be shocking if a complete ban could become the norm, as it seems to be the case in other parts of Italy;
(ii) the authorization is granted for five years and may be renewed upon expiry, with the risk of not being granted again in case "sensitive" facilities have been built in the surroundings in the meantime, with all the unacceptable consequences of the uncertainty in terms of the return on investments of authorized operators;
(iii) and finally, any form of advertising of the opening or functioning of gaming halls, when the relevance of the initiative would require an intervention at the level of state law.

In doing so the region severely undermines the rule of law in certain vital matters, such as public order, security, taxation and accounting system of the state. It is not the first time that this has happened. That would not be the casa if the judiciary would have granted the State to competence in fields that impact public safety and order event referred to in point h) of art. 117 Costs (see Judgment of the Court of Justice of 22 June 2006 n. 237; Court of Justice n. 72/2010).

Going back to initial news that the Government decided not to oppose the measure, I think it is clear that a debate will follow soon. The reasons for the failure to appeal have not been disclosed yet, however, one thing must be said: in case the government was influenced by a previous decision of the Constitutional Court recessed by the former government (decision n. 300 of 2011) which rejected the appeal of the similar law enacted by the Province of Bolzano n. 13/2010, the current administration lost a good opportunity.

An opportunity was lost because this could have been a good moment for backing away from a couple of aspects of the cited case, especially in the part where it says that the question of constitutionality is unfounded because the appealed law covers matters (protection of vulnerable people, road traffic, the acoustic pollution and disturbance of peace) that are not reserved to the State under subparagraph h) of article. 117 of the Constitution, as public order and safety should be seen as crime prevention.

In stating this, the Court essentially does not consider the fact that banning legal gaming paves the way for illegal gambling. This is a golden opportunity for crime to thrive, rather than crime prevention.

Some might say that what should be done when the Court engages in this type of analysis, is not take into account the so-called *"reflexives effects"* such as committing crimes, but only the scope of the rule in question. However, one could rebut that in the same judgment, the same Court states, almost as providing an additional motivation for its decision, that *"the contested provisions concerns situations that do not necessarily involve any real danger of committing a crime",* and the latter circumstance in reality does not seems to fit the findings regarding the expansion of the illegal gambling offer.

In other words, if you allow local authorities to impose *ad hoc* banning measures that apply to almost all of their jurisdiction, this will allow the replacement of legal offer with illegal one in order to meet the existing demand.

And allowing illegal gambling to establish itself means to enable (not to stop! Not to prevent!) a chain of crime to take place: from illegal gambling to mon-

ey laundering, from tax evasion to other criminal activities.
So, how can it be maintained that the local law is legitimate because it protects traffic or vulnerable people and does not affect crime prevention, which is reserved to the state, but at the same time ignores the fact that the same rule can generate other crimes, thus hindering the crime preventing action, which is exclusively reserved to the State?
Finally, if the Government has decided not to appeal Liguria's Regional Law, legal operators do not necessarily have to passively accept the negative effects of it.
Indeed, the denial of opening or installing of equipment possibly adopted by Liguria's municipalities may be appealed before the competent court, as it is already happening in Trentino due to a municipal decision in line with Trento's County Law.

Legal gambling does not harm you

A recent judgement of the tar of Umbria is destined to change the opinions of some municipalities which are involved in anti-gambling campaigns: dependence is created by illegal and not legal gambling

GIOCO NEWS JUNE 2012

IT must be said, the judges of the Tar of Umbria have made justice to the thousands of operators practicing in all legality and why not even the state, which too often had unjustly been accused of being "maker" by medias. This is true not so much because they canceled a municipal resolution limiting the use of the devices on the territory, but because of the reasons for it. Let's see why.

The judgment is available on the website of the Tar Umbria, dated April 20, 2012 and relates to the annulment of a regulation of the City Bastia Umbra, which not only imposed limitations to the opening/closing of gaming shops, but forced the shutdown of devices referred to in art. 110 during the regular opening hours of all of the business (such as cafes) in which said devices are installed.

Needless to say, these limitations have a serious negative impact on legal gambling with all of the known consequent: from drops in revenues for the entire sector (licensee, managers and operators) to consequences on the territory in terms employment, to the reduction of tax revenue, which now more than ever is under the magnifying glass because of the fact that it gives illegal gambling more chances to operate, not to mention the well-known phenomenon of so-called micro-gaming-tourism-exodus (because in neighboring municipalities gambling is not restricted).

That being said, the reasons for the cancellation are numerous, but it is worth pointing out the ones the judges deemed to be relevant.

Since the beginning of the litigation, as a precautionary measure, the effects of the ordinance were suspended because *"in comparing the interests at stake, the more serious and irreparable damage prevails, not only in terms of economic losses, resulting from the implementation of the contested order "*. Therefore, it is important

and comforting that judges, while balancing interests, recognized as prevalent and worth of protection that of those of not undermining interests of a non-pecuniary nature, such as mentioned above. During the hearing on the merits, in confirming the decision taken in the pre-trial stage, the appeal clarifies that gambling addiction is a disease linked to unlawful gambling and not lawful one, which is the result of a balancing of interests carried out by the state legislature. And here it should be emphasized the importance of the distinction between legal and illegal gambling. Illegal and uncontrolled gambling is suitable, inter alia, to determine damage and diseases (compulsive gambling can generate with reckless prizes or unlimited stakes, can undermine public safety etc.). Legal gambling does not. Legal gambling is controlled, is limited, is forbidden to minors, is conceived by the legislator who, with all the caution required by the case, bounds with rules adapt to protect users, both players and not. Therefore, legal gambling is not suitable, as such, to generate disorders such as compulsive gambling (or public safety issues).

Furthermore, it emerges that the State legislator, precisely because it possess the proper tools to balance the interests involved, is the only one be able to intervene on the matter and in case the State allows other parties (for example the Municipalities) to intervene on the subject, the latter, especially if the intervention imposes limitations on operators' interest, must highly justify its action, making sure that the motivations is *"intense and incisive, appropriate and representative of a problematic situation, that spells out all of the serious dangers "*. The motivation must be important and, therefore, also convincing.

In addition, even if one grants the possibility for the city to legislate on the basis of powers granted to it by art. 50 TUEL, said provision yes does give the mayor the ability to *"coordinate and reorganize shops and public services opening hours",* but this power must be exercised on the basis of guidelines set by the City Council and based on criteria laid down by the Region. This must be done in order to ensure the maximum level of plurality when taking decisions which could affect the interests of the community.

And for example, in order to safeguard the state's competence, the judges affirmed that *"The spread of the legal gaming equipment is not in itself a sufficient reason to intervene beyond the ordinary distribution of powers."*

The result of the ruling adds to those of a series of precedents, sometimes conflicting, and therefore represents an important contribution for clarifying the matter for the obvious reasons of rule of law and homogeneity on national territory.

Vicenza's minimum distance

LAW STATEMENT PUBLISHED BY THE JOURNAL OF VICENZA JUNE 22, 2012

FOR the past few days Vicenza's local media has been talking about the closure of a gaming room by the Municipality. I was asked to identify the best way forward. I believe that in these cases the best thing to do is to provide citizen with all the relevant information, so that they can have the whole picture on the matter.

Perhaps not everyone knows that the gaming room in question arises from an idea of a well-respected local entrepreneur who, in agreement with an important state concessionaire, started to realize his project in 2011, after submitted all the relevant request to the Municipality, receiving clear answers in response, such as the request of payment of a tax on street gambling advertising.

Only after having made all the necessary investments (construction works, commitment to pay the rent and salaries) the entrepreneur had to take note of a regulation issued by the municipality, which prevents the opening of gaming rooms within a range (500 meters) from certain sensitive locations.

In order to not lay off workers, the entrepreneur initially thought to comply with this policy (he was also willing lose all the money he had already spent) and was looking for an alternative location that was not close to any area considered a sensitive one under said regulation. He was surprised to find out that as a result of the implementation of the law, it is technically impossible to open a gaming room in Vicenza! Therefore, one must ask the following: is this a fair measure? Is this a measure consistent with the premise of the regulation itself?

That is when the entrepreneur and his workers' Calvary began, because within a matter of few months the Police Headquarters firstly temporarily rejected the request for opening, then suspended the rejection order, suddenly it issued a final refusal decision, and finally, issued the license required for the opening of the gaming room (mind that these are four diametrically opposite measures).

At this point, after receiving the final opening authorization (again, mind that he held an opening authorization) issued by the Police Headquarter, the en-

trepreneur and his workers were able to open the business activity. However, the Municipality decided to intervene and close the shop.
At this point we believe that the following question should be asked: in this environment, what does a private citizen need to do when confronting a state's administration (the Autonomous Body Administering State Monopolies) that allows him to exercise its business activity, a state administration (the Police Headquarters) which, after four different measures ends up granting the opening of the gaming room, and a state administration (the municipality) who first asks for the payment of the fees for street gambling advertising, but then issues Rules that bans the opening of such business activity, and finally shuts it down?
I apologize with the readers for the headache I procured them with this summary, but I assure you that the entrepreneurs and their workers have had and still have a more serious and bigger one in these months.
This "I consent, I do not consent, I authorize you, I do not authorize you" has hitherto prevented the entrepreneur from being able to argue in court on the merits of the illegitimacy or legitimacy of the rules, in order to understand once and for all if with the authorization of the Autonomous Body Administering State Monopolies, despite the license of the Police Headquarter, one can exercise or not, can protect its workers, whether or not one can recoup its investments, whether it is right or not to say that the aim is to regulate, while at the same time imposing prohibition on the entire municipal territory.
Apart from whether the rules will be judged correct or not (from Judges, and not just by the media), let's say that the bitterness arises from the difficulties that a businessman must face because of the lack of legal certainty.
It is to be understood that the lack of legal certainty is capable of causing significant damage to our country, the absence of legal certainty destroys any project and puts in jeopardy precious jobs.
The bitterness also stems from the fact that the political battle against legal gambling, against the legal operators of the industry, who as state soldiers ensure compliance with the rules of the games. This has as the macroscopic effect of creating the conditions for illegal gambling to thrive and satisfy the existing demand. The consequences will be visible.
Citizens should know about things like this, and therefore should defend these honest and courageous entrepreneurs who in these lean times make the effort to respect all the rules, offer a unique opportunity to their workers and pro-

vide the state with highly needed tax revenue in order to solve the worrying public debt. Honest entrepreneurs who still want to invest in Italy, who have not decided to emigrate abroad to plant their businesses and to realize theirs and their own workers dreams.
Businessmen of this kind should simply say thanks to exist.

Riva del Garda and Cles, bittersweet suspension rejection

GIOCO NEWS JUNE 26, 2012

ON February 27, 2012, the Municipality of Riva del Garda adopted Resolution no. 106 PROT. No. 0006542 concerning *"settlement criteria of equipment Approval (…) in public and commercial businesses with gaming as main activity (arcades) ", with which it imposes the ban on arcades and dedicated areas (as well as installation of new equipment) to open within a certain distance from certain sensitive sites.*

Following the hearing on 21 June 2012, the TAR of Trento rejected the request for suspension but provided very important clarifications requested by the defense in the interest of the body of legal gaming operators and to safeguard reasons of legal certainty on the whole State territory.

In fact, although the administrative judges choose to safeguard the municipal resolution, which does not escape the College, made aware of this point, felt the need to clarify right away two critical issues that emerged *ictu oculi by the tenor of the resolution*.

The first criticism of the judges is that the prohibition imposed by the resolution does not concern the existing equipment (as indicated by the tenor of the resolution itself), but even the equipment intended to replace those devices already installed (which concern most of the operators). On this point, the TAR clarifies clearly that "*... these limitations do not apply to equipment already installed; this discipline is therefore evidently without prejudice to any replacements of existing units, as required by provincial law and according to an interpretation of the opposing teleological measure, systematic and objective good faith «. And, he adds, it is regardless of the fact of whether the replacement takes place for reasons related to legal updates or purely due to commercial choices.*

The second criterion on which the Tar of Trento shed light concerns the fact that the Communes in regulating the distances will not be able to prevent the whole of the municipal territory from installing appliances or opening new

halls. In other words, though it can be regulated locally, certainly you cannot radically inhibit all forms of gaming on the territory of competence. In this regard, the TAR, in the knowledge that this risk also arises in the deliberations of other Municipalities, believing that the criteria set out in the resolution represents, instead of a regulation of distances, a real prohibition of opening on substantially the whole municipal territory , invites the City, before the hearing of the merits of the case, to *"provide a more complete preliminary investigation to identify in more detail and less expansiveness [mind you less expansiveness]" sensitive places «. Ergo, the Administration's task will be to better identify the so-called sensitive areas and reduce [mind you reduce] its number properly supporting, as stated in the order, the identification of those «limited» referred to in paragraph 2 of ‹art. 13bis of the Provincial Law of Trento.*

Moreover, it is considered that these principles be also confirmed by reference to another municipal resolution, discussed at the same hearing on June 21 2012, by the Cles Town Council, which has been less talked about these days but presents the same specifics.

For this reason, I cannot recall a rejection with such a sweet taste.

An uncommon slot machine

Anti-slot regulations of Bastia Umbira, the new regulations of Florence and the "problem" of Piemonte. When (and especially how) a local administration can interfere with slots? And when, instead, it constitutes an illegitimacy or even an abuse?

GIOCO NEWS MARCH 2011

Today we consider the topic of the growing number of municipal measures that impose limitations on the use of devices referred to in Article. 110, comma 6, letter a) of the TULPS, the so called new slots machines or AWP.

Indeed, many mayors are opting for ordinances and regulations that limit: (i) the opening hours of gaming rooms; (ii) time-slots during which AWP can be switch-on in businesses and shops (such as cafes, restaurants, shopping centers, and c c.); (iii) the carrying out regular activities in certain municipal areas; (iv) the carrying out of regular activities near certain places of aggregation.

The reasons for doing so are often different: (i) to counteract the onset of dependency phenomena of gambling addiction, the so-called ludopathy; (ii) to protect vulnerable subjects form being attracted to gambling; (iii) to protect the artistic and architectural decoration of the city and safeguard the peace and public safety. And so on.

But a general premise should immediately be done.

Municipal initiatives directly affect all operators in the legal gaming industry, whether state's licensee, or third-party charged with the management of gaming or operators: (i) on the one hand, time constraints represent a shrinking of gambling activities, thus of revenue; (ii) secondly, the obstacles to the opening of gaming rooms in certain areas or on the basis of distances criteria, limits on gambling supply in the territory create an unjustified concentration of offer in areas in which it is permitted, with consequent further loss of revenues. The revenue drop creates consequences, as already discussed, for the coverage of costs and facilities investments, and for the purchase of the AWP.

Some have even claimed that, though inevitably and unintentionally, such

measures may in some way favor "illegal gambling", pardon the oversimplification, which probably feels authorized to fill the supply vacuum created.
It is clear that these regulations have sparked a debate among "legal gambling" stakeholders, which are both sensible to economic prejudices (and mind you, the gaming industry today generates business for a really substantial number of employees), and to the fact that they want to be sure that no "illegal offer" can arise.
Having said that said, we have chosen to not carry out a more general assessment, such as the possible negative impact on State tax revenues (it would not be surprising if we were to discover that a lower collection of tax revenues would result is a proportional decrease in terms of one-off amount [PREU] revenue). Rather the focus will be on whether municipal initiatives can be replaceable with more effective measures. This is worthy of further and separate investigation.
The intent is to address the debate, making sure to focus on strictly technical aspects. In doing so, one realizes that everything revolves around the verification of the existence or not of municipal competence to legislate on the AWP, if there are some limitations on it and the legality of the instruments used. Moreover, and above all, one must keep in mind a crucial aspect of the "legal gambling" world: the sector, his discipline, procedures and operating limits are attributed to the exclusive competence of the State (not a local authority, such as a municipality) operating through regulatory measures or parliamentary delegated source (and not mere administrative measures).
The spirit of the legislator, who decided to grant exclusive competence on this matter to the state is clear: this type of product is "legal gaming," a gaming that does not harm consumers because it is controlled and responsible. The solution opted for is not prohibition, but a well-regulated offer and the proper verifications of compliance with the law. In this framework, the safeguarding of the players and fighting against gambling addiction fits perfectly.
The state legislator's objectives, as the only subject responsible for the matter, dictates specific provisions and, as established in the recent Budget Law, is ready to take all the necessary actions for preventing, contrasting and recover people affected by compulsive gambling.
On the contrary, municipal activities, and more specifically that of mayors, should be directed to competences granted to them by law. The point is that actions aimed at tacking gambling addictions, the protection of the weaker

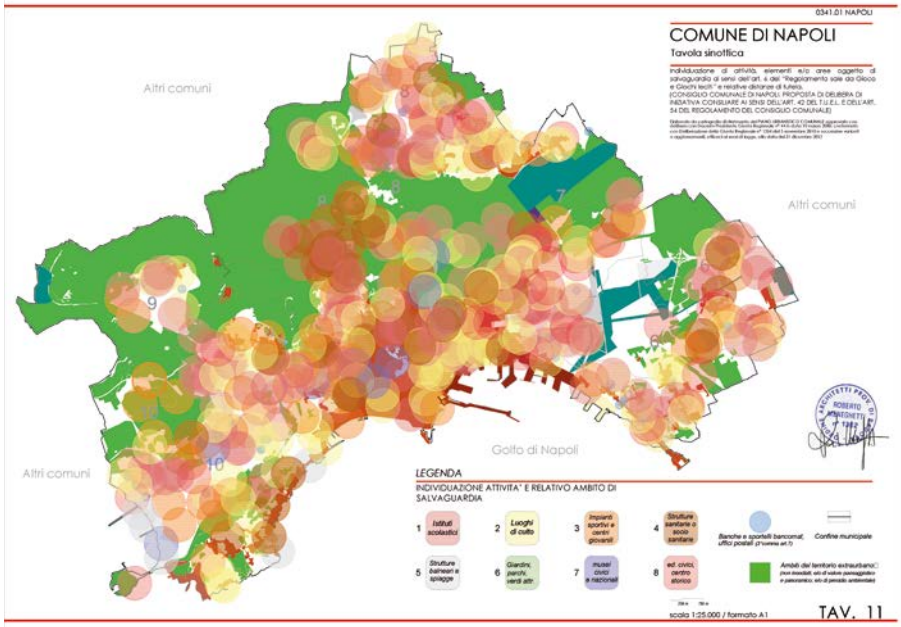
sections of the population by means of time restrictions for the use of AWP, installing methods, limits on the possibility of opening new gaming rooms within certain areas or to perform its activity near gathering places, do not fall under the category of competences entrusted to the local government.
Therefore, it is because of this that many administrative tribunals are becoming aware of the issue, and are accepting operator's demands of suspension or cancellation of municipal ordinances and regulations concerning limits on the use of AWP.
Among others, we recall the ordinances of: the Municipality of Forio that was annulled by Campania's TAR, the City of Bastia Umbra, suspended by Umbria's TAR and the town of Stresa (cancelled the mayor after appeal before Piedmont's TAR).
Among others, municipalities that currently have restrictive measures AW P are the following:
(i) the Municipality of Settimo Torinese, whose Mayor, on February 7, 2011, issued an order limiting the number of hours for the powering of devices; (ii) the City of Florence, on February 4, 2011, published "Regulations for Gaming Rooms" (approved on 10.01.2011) which, bypassing previous union orders, has legislated on the matter, setting particularly stringent limits for the opening of gaming rooms, thus prohibiting their opening in the historic city center and in the vicinity of schools, places of worship, associations, housing and its surroundings; (iii) the Municipality of Bologna, on February 2, 2011, published the "Urbana Police Regulations" which set stringent limits and forbids the opening of gaming rooms close to schools, association headquarters, other gaming rooms, housing and its surrounding; (iv) the City of Collegno, on December 16, 2010, approved a regulation (published on 28 December 2010) has established limits on the positioning of equipment and functioning hours; (v) the Municipality of Verbania, on April 21, 2009, has made changes to the regulations issued on the subject in 2005, with which they established time restrictions on the powering and installing of equipment; (vi) the Municipality of San Remo has issued a regulation limiting the number of hours for the powering slot machines that could impact other locations given the reference to limitations on the VLT; (vii) the City of Bolzano, whose mayor announced that he will shortly issue an order that limits the functioning hours of devices; (viii) the City of Imola, whose mayor has expressed its intention to take steps to limit the functioning hours of devices and their locations; (ix)

the Municipality of Cremona, given that some members of the political forces want to issue measures that limit the hours for the powering of equipment. Well. In conclusion, it seems to be possible to affirm that, in case more and more appeals against said and other measures are put forth, suspensions or cancellations are not to be excluded.

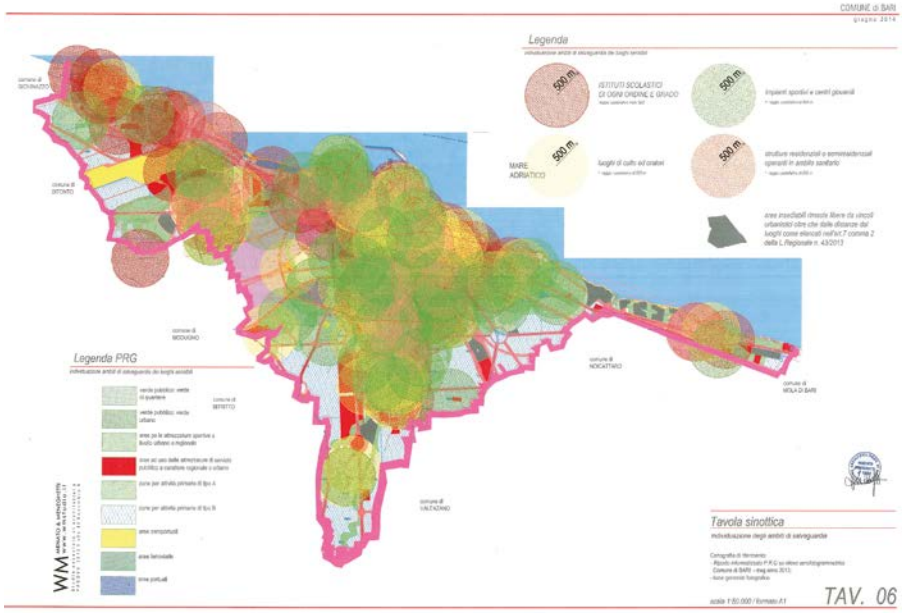
PART TWO

The tables of crowding out effect

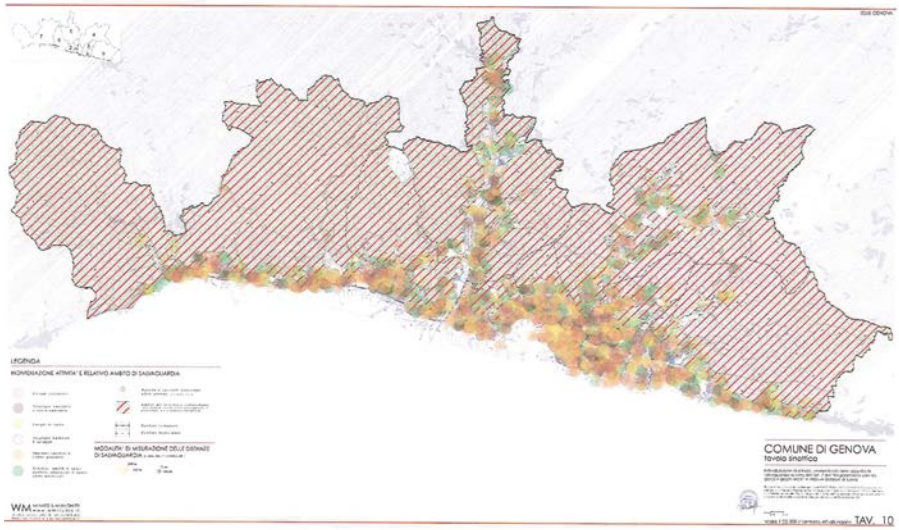
NAPOLI


0341.01 NAPOLI
COMUNE DI NAPOLI
Tavola sinottica
Altri comuni
Altri comuni
Altri comuni
Golfo di Napoli
LEGENDA
INDIVIDUAZIONE ATTIVITA' E RELATIVO AMBITO DI SALVAGUARDIA
1 Istituti scolastici
2 Luoghi di culto
3 Impianti sportivi e centri giovanili
4 Strutture sanitarie e socio sanitarie
5 Strutture balneari e spiagge
6 Giardini, parchi, verdi attr
7 musei civici e nazionali
8 ed. civici, centro storico
Banche e sportelli bancomat, uffici postali
Confine municipale
Ambiti del territorio extraurbano
scala 1:25.000 / formato A1
TAV. 11

BARI


COMUNE di BARI
Legenda
500 m.
ISTITUTI SCOLASTICI DI OGNI ORDINE E GRADO
Impianti sportivi e centri giovanili
MARE ADRIATICO
Luoghi di culto ed oratori
Strutture residenziali o semiresidenziali operanti in ambito sanitario
Legenda PRG
Tavola sinottica
TAV. 06

GENOVA



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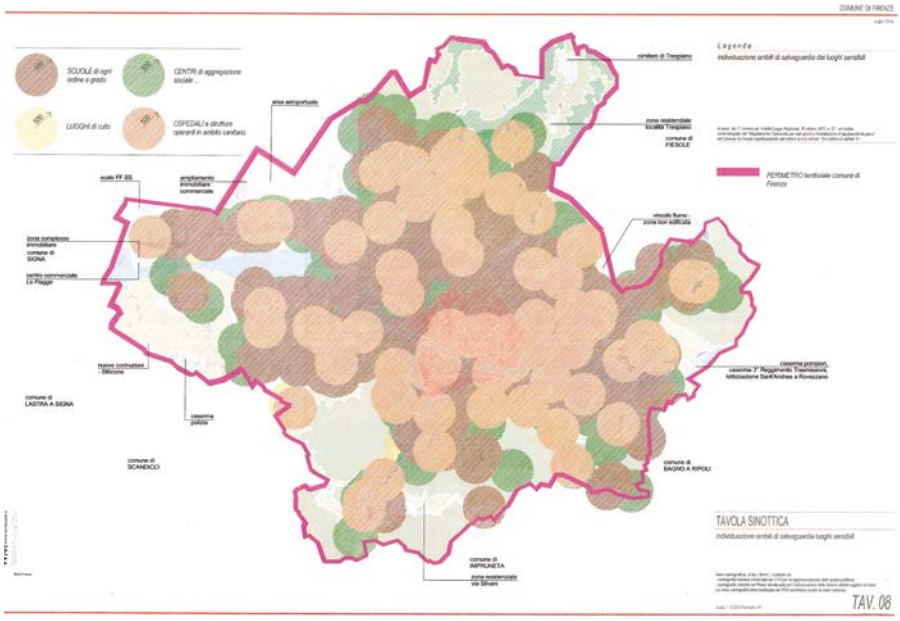

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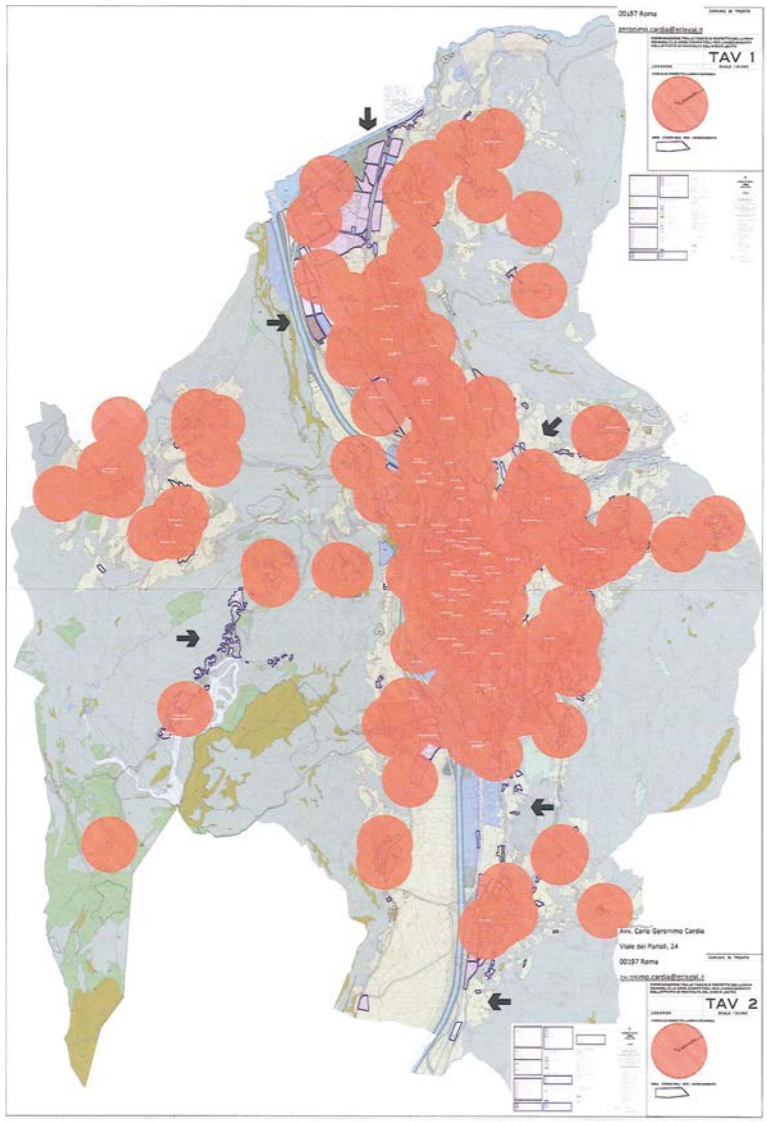
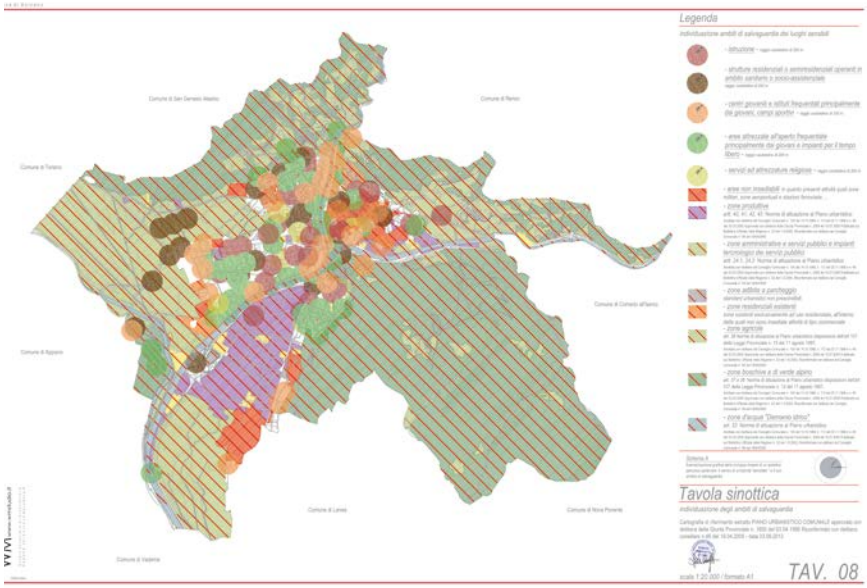


BOLZANO



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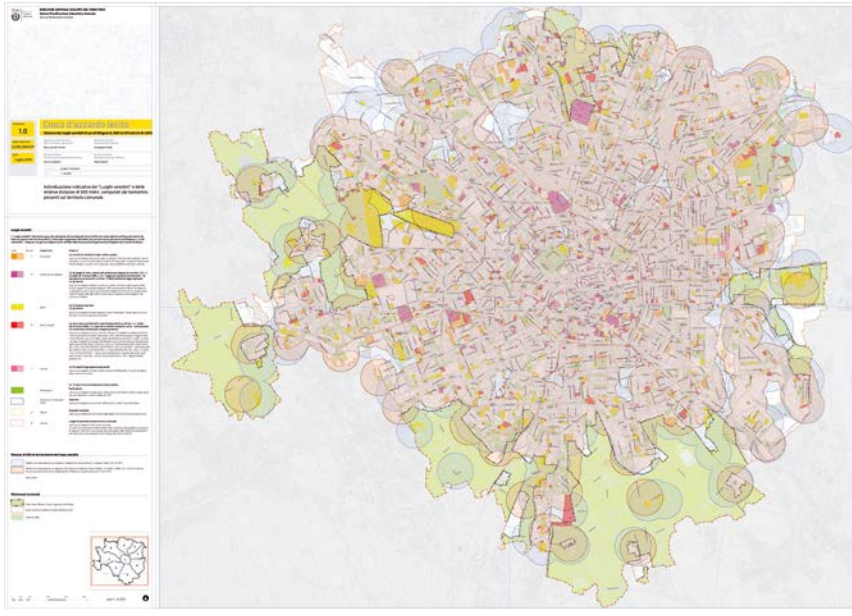

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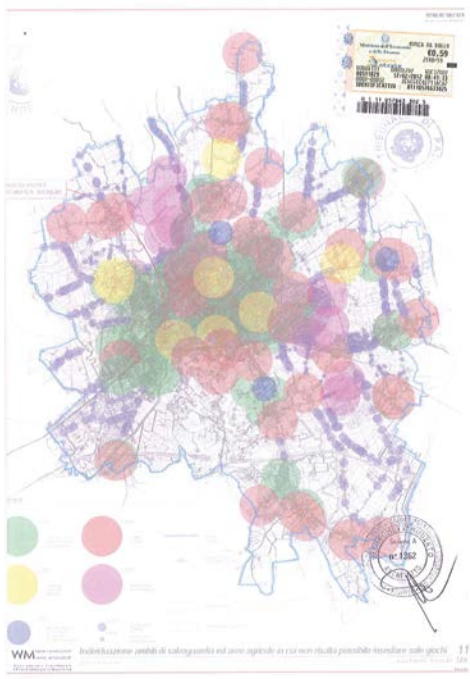
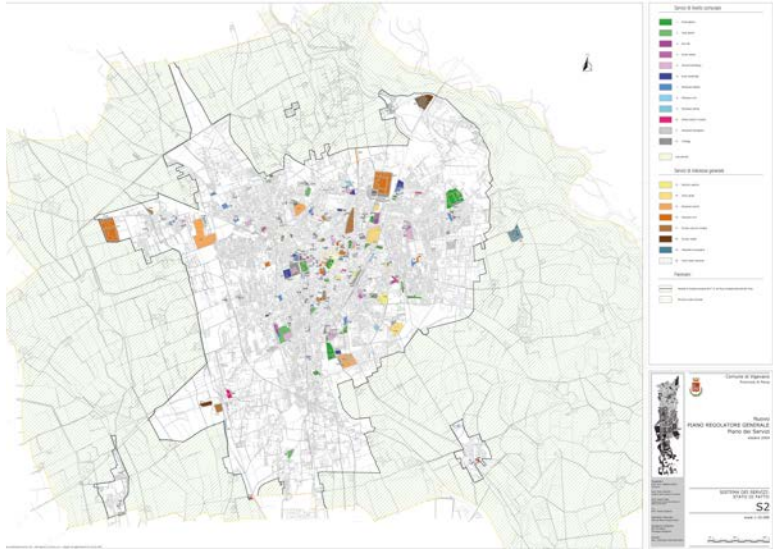


VIGEVANO



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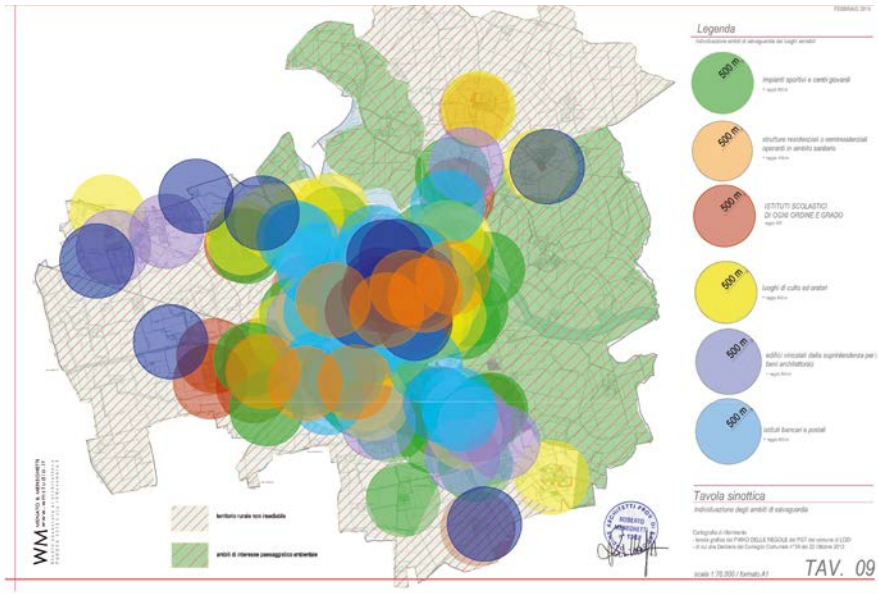

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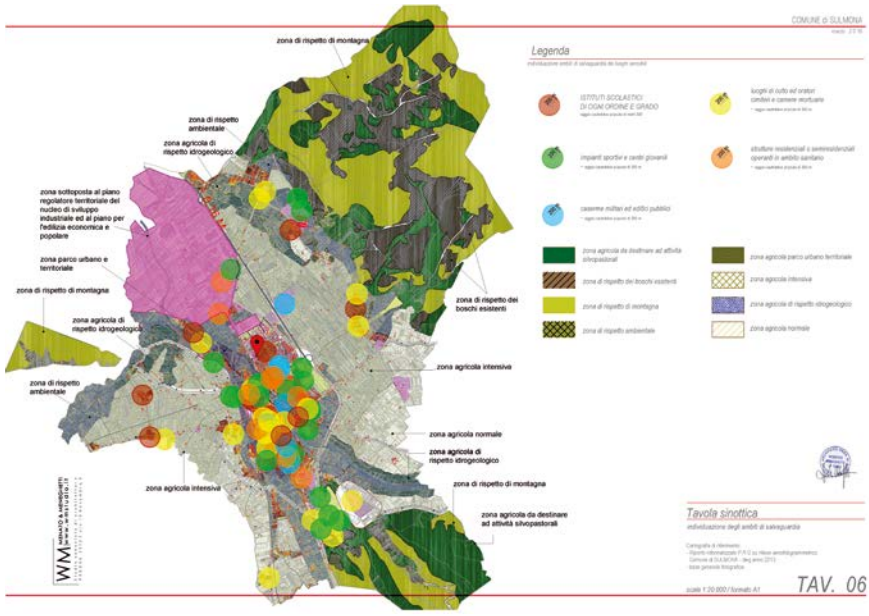

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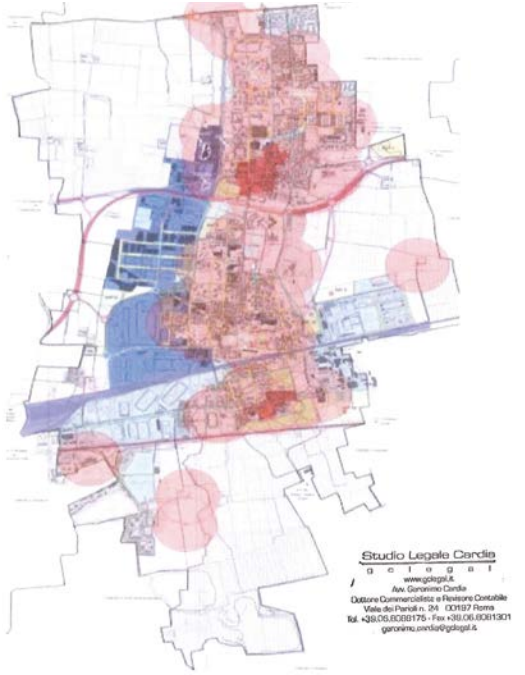

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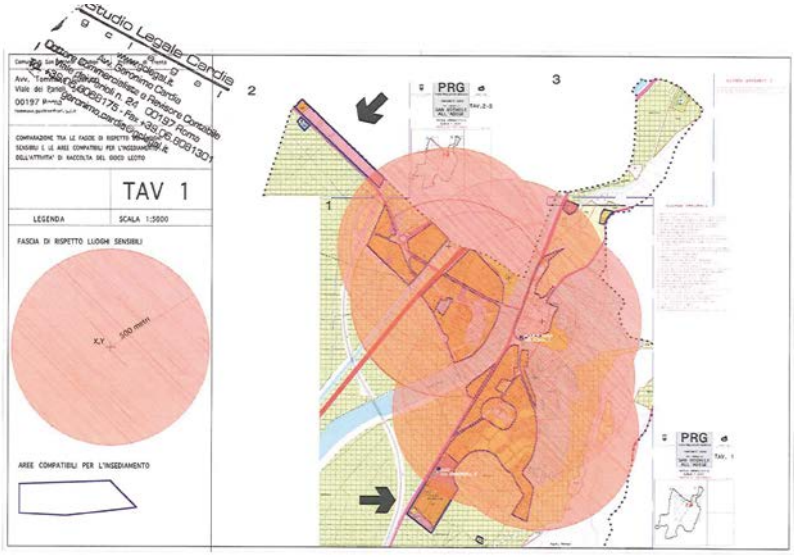
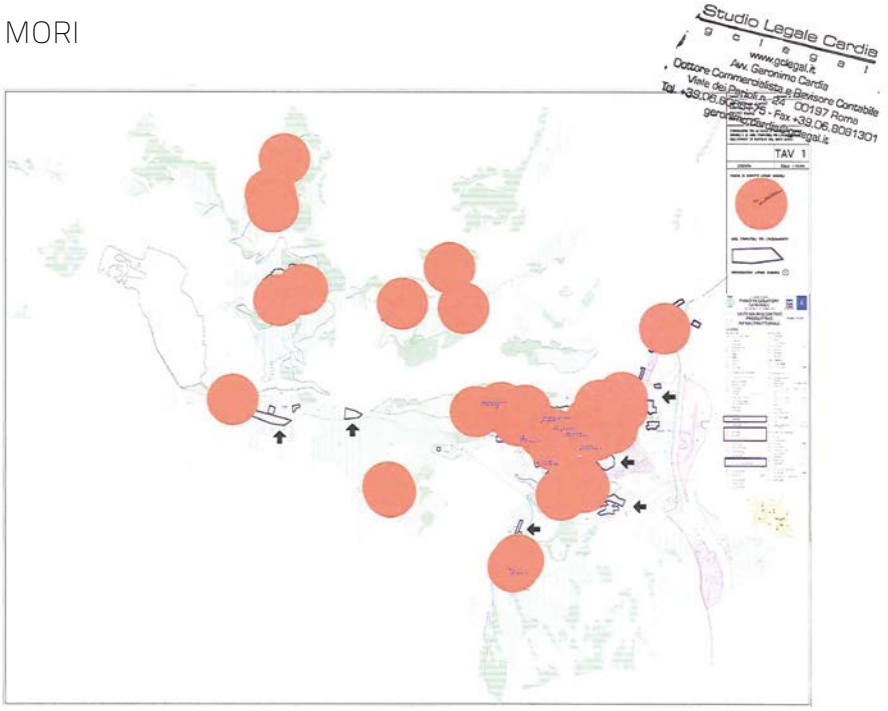
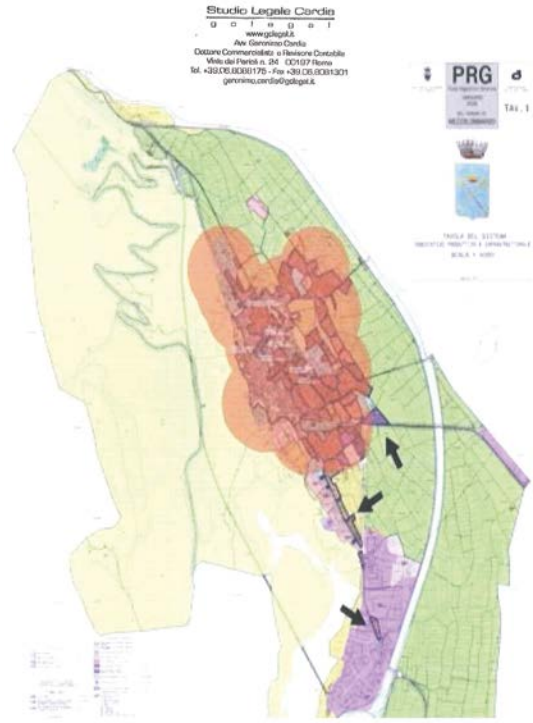


RIVA DEL GARDA

MORI



MEZZOLOMBARDO



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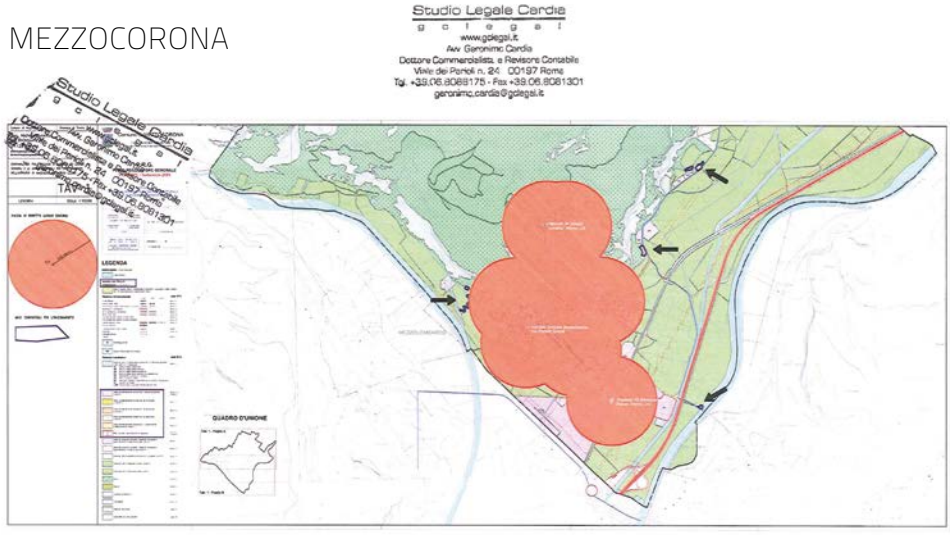

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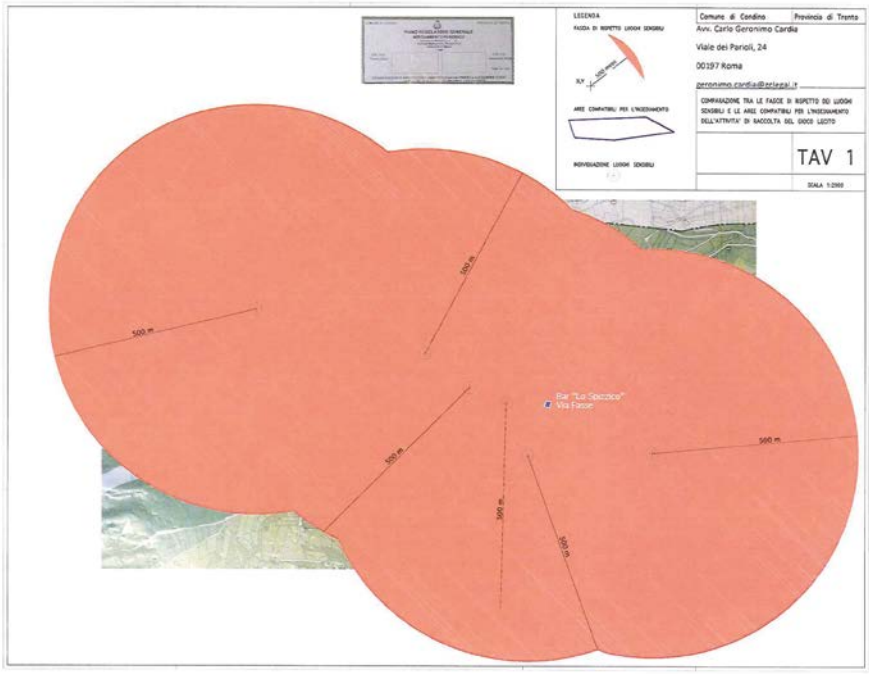
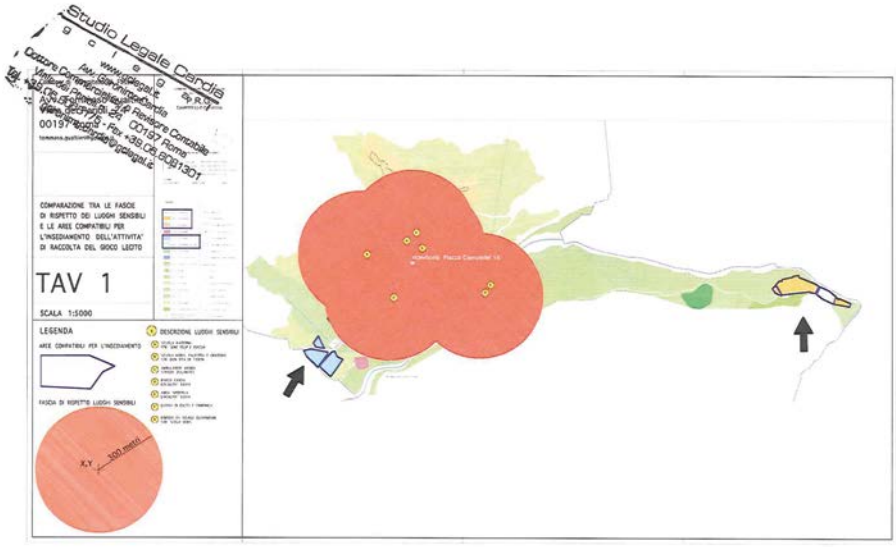


CAMPITELLO DI FASSA



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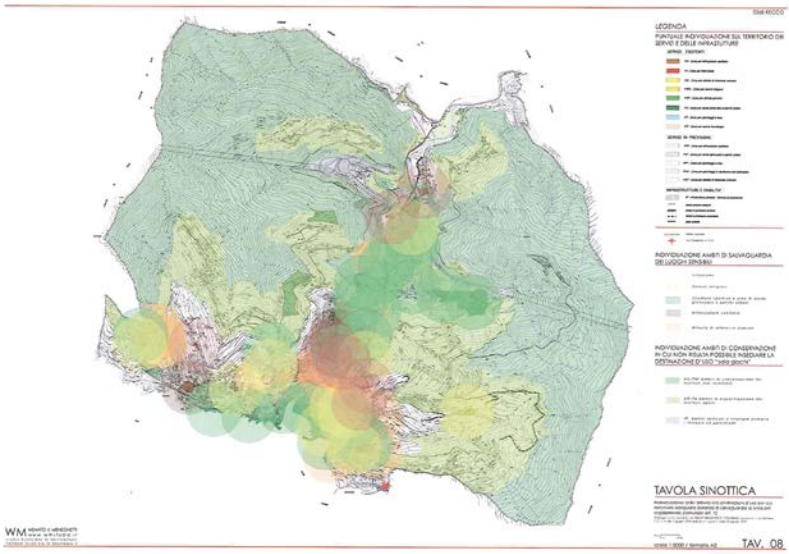
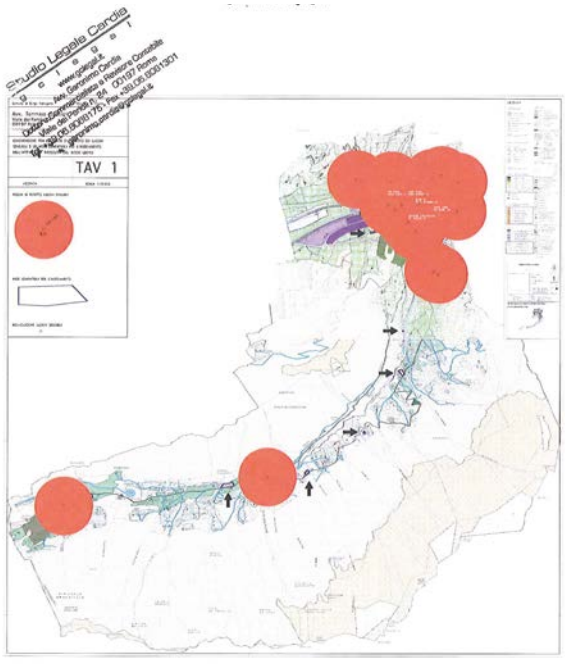


BORGO VAL SUGANA



PART THREE

An extract of the prohibitionist Regional Law

This part is available only in the Italian Version

[*omissis*]

PART FOUR

An extract of the prohibitionist Municipal Regulations

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List of publications

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CONTACTS

Email: geronimo.cardia@gclegal.it
twitter: @Geronimo_Cardia
linkedin: geronimo.cardia@gclegal.it
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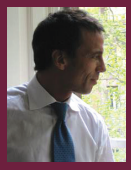

Geronimo Cardia

Lawyer, even at the Italian "Corte di Cassazione", acoountant and auditor as well as CTU both at the Civil Court and at the Criminal Court and bankruptcy curator. He graduated in Economics as well as in Law, with Master in Tax Law. After about ten years in an international law firm, he accepts tasks personally and directly, constitutes and manages companies legal departments and he founds law firm Cardia and Cardia. He has been committed to over a decade in the gaming sector taking care of legal, tax, and compliance profiles, as well as judicial and administrative litigation, M&A, corporate, JV, banking and typical themes of business law firm also aimed at the restructuring of groups and debts. He, with colleagues, assists, also for start up, in house counsel for ordinary and extraordinary business, corportate litigations (out-of-court and judicial). In public and private, industrial and financial institutions, he carries out duties as Chairman or a single component or component of Trade Unions and Supervisory Bodies, Liquidators, Liquidator and Curator Offices in different procedures. He has been coadjutor in Extraordinary Administration of Large Corporations; judicial custodian; local counsel of international groups; part of ministerial commissions for the allocation of training contributions and officer in the Italian "Guardia di Finanza". Former Professor of Tax and Practise Law, first, and then Professor of International Tax Law, within the Degree Course in "Scienze Manageriali" at the University G. D'annunzio of Chieti. Author of "Legal Profiles of Privatization", Ed. Il Sole 24 Ore and of other publications both in fiscal and gaming sectors (website page www.gclegal.it).

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