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The new Italian Government has introduced a gambling advertising ban

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Decree Law no. 87 of 12 July 2018¹ entitled “urgent measures for the dignity of workers and business” has been published on the Italian Official Journal on 13 July 2018. The “Dignity Decree”, as it is now commonly known, has entered into force, but must be converted into law by a vote of Parliament within 60 days of its publication. During this period MPs can propose amendments to the text provisionally enacted by the Government. The Dignity Decree is one of the first acts taken by the new coalition Government led by its Premier *Giuseppe Conte* and focuses on some of the social and economic objectives that the coalition aims to achieve.

Article 9 of the Dignity Decree introduces measures to contrast pathological gambling. In particular, it provides for an immediate ban on gambling advertising and a ban on sponsorships chiefly to the sports sector by gambling companies starting from 1st January 2019. More specifically, the first paragraph of Article 9 provides that, in order to better protect consumers and more effectively counter pathological gambling, all types of advertising regarding gambling and betting offering cash winnings, posted directly or indirectly on any media or through any other means (sport, cultural or artistic event, television or radio broadcast, print newspaper or any other print publication, billboards or the internet), shall be banned with immediate effect as soon as the Dignity Decree enters into force, *i.e.* on 14 July 2018. Starting from 1st January 2019, all sponsorships to events, activities, programs, products and services will also be banned.

The Dignity Decree provides for two exemptions, albeit one of them is only temporary. The first exemption from the ban is addressed to non-instant drawing national lotteries, while the temporary exemption covers advertising contracts that were already ongoing when the decree entered into force. The latter will remain in place until they expire but no longer than one year after the entering into force of the Dignity Decree.

Administrative sanctions amounting up to 5% of the value of the sponsorship or advertising contract and, in any case, of no less than 50.000 euro, are provided for any breach of the ban.

The gambling advertising ban has been one of the most discussed measures introduced by the Dignity Decree at both national and international level. *Luigi Di Maio*, Minister for Economic Development and Labour and main sponsor of the Decree, strongly defended Article 9. Also certain opposition MPs supported the measure, while others criticized it because of the possible negative effects on legal gambling operators, particularly those that operate exclusively online. It is submitted that without advertising it will be almost impossible for consumers to access their websites. Moreover, concern has been expressed with respect to the economic impact on the sport industry, namely the football industry because of the sudden loss of revenue from sponsorship agreements.

¹ Decreto Legge 12.07.2018 n. 87, Disposizioni urgenti per la dignità dei lavoratori e delle imprese. OJ no 161 of 13.07.2018.

Italy will be the only Member State of the European Union to impose a complete ban on gambling advertising. The European Gaming & Betting Association (EGBA) highlighted that “... [o]ne of the important benefits of gambling advertising is that it directs Italian customers towards those gambling operators who are licensed to operate and comply with the rules in Italy. Without advertising black market gambling will increase – with customers accessing websites which are not licensed in Italy and operate outside the regulated framework, including the legal protective safeguards for consumers...”².

From the angle of EU law, the Dignity Decree also raises concern with regard to the freedom to provide services enshrined in article 56 of the Treaty on the Functioning of the European Union (TFEU). The Court of Justice of the European Union (ECJ) already dealt with a case where the national legislator had restricted gambling advertising for certain operators. By its judgement of 8 July 2010 in joined Cases C-447/08 and C-448/08, *Sjöberg and Gerdin*, the ECJ held that “... Article [52 TFEU], applicable in this field by reason of Article [62 TFEU], allows restrictions justified on grounds of public policy, public security or public health. In addition, a certain number of overriding reasons in the general interest have been recognised by case-law, such as the objectives of consumer protection and the prevention of both fraud and incitement to squander money on gambling, as well as the general need to preserve public order ... In that context, it must be observed that the legislation on gambling is one of the areas in which there are significant moral, religious and cultural differences between the Member States. In the absence of Community harmonisation in the field, it is for each Member State to determine in those areas, in accordance with its own scale of values, what is required to protect the interests in question... The Member States are therefore free to set the objectives of their policy on gambling and, where appropriate, to define in detail the level of protection sought. However, the restrictive measures that they impose must satisfy the conditions laid down in the case-law of the Court as regards their proportionality...”³. It follows that a legislation that provides for a complete ban on gambling advertising could be permissible only if it consistently reflects the broader objectives pursued by the Member State in the gambling sector and if it is necessary and proportionate in order to meet such objectives⁴.

Article 9 of the Dignity Decree is also questionable because of the lack of the prescribed notification to the European Commission, prior to its entering into force,

² Si veda il seguente [LINK](#).

³ CJEU 08.07.2010, Joined Cases C-447/08 and C-448/08, *Criminal proceedings against Otto Sjöberg and Anders Gerdin*, paragraphs 36 – 39.

⁴ In Joined Cases C-447/08 and C-448/08, “... the gaming operators which caused the advertisements on account of which the criminal proceedings were initiated to be published are private undertakings run for profit, which could never, as the Swedish Government confirmed at the hearing, have obtained licences for the operation of gambling under Swedish legislation. The prohibition on the promotion of the services of such operators to consumers resident in Sweden therefore reflects the objective of the exclusion of private profit-making interests from the gambling sector and may moreover be regarded as necessary in order to meet such an objective...” (paragraphs 44 and 45 of the judgment).

provided for by Directive (EU) 2015/1535⁵. Article 5 of Directive (EU) 2015/1535 establishes that “... *Member States shall immediately communicate to the Commission any draft technical regulation, except where it merely transposes the full text of an international or European standard, in which case information regarding the relevant standard shall suffice; they shall also let the Commission have a statement of the grounds which make the enactment of such a technical regulation necessary, where those grounds have not already been made clear in the draft...*”. Moreover, “... *Member States shall postpone the adoption of a draft technical regulation for three months from the date of receipt by the Commission of the communication referred to in Article 5(1)...*” (Article 6).

In light of the above, the Secretary General of the EGBA has already asked the Commission to take all necessary steps for Italy to respect the notification procedure and the 3 months standstill period. The Commission has not addressed this request and no official statement was issued. It must be noted that in December 2017 the Commission closed infringement procedures and complaints in the gambling sector towards all Member States against whom complaints were pending since there was deemed to be scarce Union interest in pursuing alleged breaches of EU law in that connection. The *Juncker* Commission decided instead “... *to focus on its [other] political priorities and pursuing them vigorously...*”⁶. It is expected that the ban on gambling advertising will soon become the object of legal and judicial, besides political debate and lobbying actions by the industry (and the football and sports industry as recipients of sponsorship revenue), if gambling operators should choose to challenge in Italian Courts Article 9 of the Dignity Decree, or indeed any financial sanctions levied on that basis. Significantly, Google commenced in fact to ban gambling advertising originated from .it domain from its search engines.

⁵ Directive (EU) 2015/1535 of the European Parliament and of the Council, of 9 September 2015, laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services. OJ L 241 of 17.09.2015.

⁶ *Commission closes infringement procedures and complaints in the gambling sector*, available at the following [LINK](#).