Esports in Italy: an industry ready to take off (or still in search of its regulatory soul)?

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Abstract: As the International Olympic Committee is considering whether Esports can and should qualify as sports, Esports events are becoming bigger and bigger worldwide, attracting fans as well as sponsors and investors looking for opportunities in this fast-developing economic sector. However, at a global level, the regulatory framework applicable to Esports tournaments is often fragmented and uncertain. This is the case in Italy, where an inadequate regulatory framework is likely to act as a disincentive for investors and, in particular, international investors. This article explores the regulatory pitfalls of the Italian legal ecosystem looking at other countries' experiences (South Korea and France) from a comparative perspective.

Keywords: Esports, video games, publishers, Italy, federations, copyrights, prize competition, gambling, advertising

1. Introduction

Esports, also known as 'competitive videogaming', which is arguably a more appropriate term, is both a growing social phenomenon and, at the same time, an industry capable of driving significant revenues and creating appealing opportunities for developers, publishers and other interested third parties. Tournament and event organizers, brand-owners and platforms increasingly see the huge entertainment value that the show of individual players and teams is able to create and offer to video game fans. On the other hand, brands are now becoming more and more aware that competitive videogaming offers them the opportunity to reach the youngest demographics quite effectively and this is probably why sponsorship revenues are currently the main source of revenue for the Esports industry.¹

Italy has not been exempted from the surge of interest in Esports, despite being a jurisdiction in which videogaming has taken longer to acquire social and economic significance, especially when compared to certain Asian states, the US and other European countries.²

Indeed, developers and publishers who have a global presence are beginning to support and collaborate with local partners with respect to initiatives which are

specific to Italy because they see Esports as an opportunity to stimulate player engagement and promote their games and brands, thus resulting in increased sales, more favourable conditions for monetization and – if a game is successful among consumers on a truly large scale – the creation of an entirely new revenue stream.

With that being said, the fact remains that a reasonably prudent business person considering a commercial investment in the Italian Esports sector is likely to conclude that such a move would not come without risks.

The reticence of investors may be partially explained by what could be best described as 'systemic fallacies' of the Italian Esports ecosystem. These fallacies add to the risk that is inherent to the Esports ecosystem as a whole, and which are due, in particular, to the existence of the exclusive intellectual property rights held by developers and publishers on the game itself, which allow them to exert a significant degree of control over how their games are utilized and by whom, within the boundaries set or, rather, to be set, by anti-trust law. This is a key difference between 'games' played in traditional sports and '(video)games' played in Esports tournaments that investors must consider in all jurisdictions.

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1 Indeed, numbers are staggering and have long exceeded six-point figures in sponsorship revenues. Naturally, this has not gone unnoticed. See, by way of example: <https://www.forbes.com/sites/greatspeculations/2018/07/11/how-big-can-esports-grow-in-2018/#225abd56a360>, accessed 2 April 2019.

2 According to a report published in 2018 by AESVI (an acronym which translates as the Italian Association for Videogame Editors and

Developers), the Italian video game trade association, approximately one million people in Italy follow Esports events multiple times per week and keep up-to-date with the news and changes occurring within the video game industry. See 'Primo Rapporto sugli Esports in Italia. Protagonisti, tendenze, brand, sponsorship, prospettive di sviluppo' available from the AESVI website at http://www.aesvi.it/cms/download.php?attach_pk=1496&dir_pk=902&cms_pk=2919, accessed 2 April 2019.

However, Esports investors, when specifically considering Italy as a country to set up operations or simply as a consumer market, must also be aware of these ‘systemic fallacies’ to be able to address the risks, which their investments are consequently, and inevitably, exposed to. As we will illustrate further down in this article, in particular, the current Italian legislative and regulatory framework appears inadequate to support sustainable long-term growth of the competitive gaming sector in the country, primarily because it is shaped by rules that were drafted clearly with no consideration – let alone understanding – of the reality of the competitive videogaming phenomenon. In our view, this does have negative repercussions in key legal areas such as the protection of minors and personal data as well as in matters of compliance and transparency in general. Put another way, we argue that the legal and regulatory context within which the Italian Esports sector is presently forced to operate, still suffers from a lingering immaturity that is potentially liable to disincentivize foreign capital investments within the country and discourage international organizations and professionals – particularly those who hail from more mature markets, such as South Korea, the US and China³ – from actively engaging in Esports commercial activities in Italy, with a consequential loss of opportunities.

Italy, whose economy has been suffering lately and whose IT infrastructure is lagging behind, however, cannot afford to miss the opportunities that Esports create in terms of the potential injection of fresh foreign capital, as well as expertise and know-how that an *efficient* ecosystem could attract, not to mention the possibility for the government to collect higher tax revenues.

If it is true that the risk is reduced by the relatively scarce interest in video games thus far shown by the Italian regulatory authorities, we should bear in mind that this situation may well change in the future in as much as games are now on the radar of the legislator and regulators in Italy. Indeed, we should not ignore the recent focus

placed on games by the Italian consumers authority⁴ nor the fact that the Italian Communication Regulatory Authority (AGCOM, an acronym for *Autorità per le Garanzie nelle Comunicazioni*) is bound to issue a classification system for video games⁵ and also the fact that the Italian government has recently declared its objective to crack down on pathological gambling and the Regulatory Authorities whose first act has been the issuing of a very broad ban on gaming advertising.⁶

The elements that we have identified as the primary determining factors of the inadequacy of the Italian legislative and regulatory framework as it currently exists today are to be found in three pieces of legislation:

- Presidential Decree no. 430/2001, containing the rules applicable to prize competitions (hereinafter also the ‘prize competitions regulation’);
- Legislative Decree no. 496/1948, creating what effectively is a state monopoly in respect of the organization of games (including skill-games) and competitions with cash winnings or that are rewarded with other prizes (hereinafter also the ‘gambling regulation’⁷);
- Law Decree no. 87/2018 (converted into Law no. 96/2018), introducing a general advertising ban for gambling products and services as well as for games with *cash winnings* (hereinafter also the ‘advertising ban’).

The structure of this article will be as follows.

First, the analysis will focus on each of the above sets of laws with a view to illustrating how the current rules may impact on Esports and determining the extent to which any systemic shortcomings may hinder the sustainable and successful long-term development of the Esports industry in Italy. Secondly, the article will critically evaluate the possible solutions that may be implemented in Italy for overcoming the shortcomings of the present system and for those purposes will consider the different, and arguably somewhat opposing, regulatory models adopted in South Korea and France. Finally, the discussion will conclude by (tentatively) indicating what we believe to be the way forward for the Italian Esports industry.

3 See ‘Global Esports Market Report 2019’ Newzoo (2019). A light version of the report is available from Newzoo website at <https://newzoo.com/insights/trend-reports/newzoo-global-esports-market-report-2019-light-version/>, accessed 11 April 2019.

4 The Italian Consumers Authority on 25 September 2018 and 29 November 2018 issued two decisions involving, respectively, Microsoft Corporation and Sony Interactive Entertainment Europe Limited, finding that the information that had been given to consumers in respect of the need to sign up to a paid-for subscription service (i.e., Xbox Live Gold and Sony Playstation Plus) to be able to play the online component of video games was insufficient according to Italian consumer law. See [http://www.agcm.it/dotcmsCustom/tc/2023/10/getDominoAttach?urlStr=192.168.14.10:8080/C12560D000291394/0/616321EEF602622AC1258327004A460E/\\$File/p27366.pdf](http://www.agcm.it/dotcmsCustom/tc/2023/10/getDominoAttach?urlStr=192.168.14.10:8080/C12560D000291394/0/616321EEF602622AC1258327004A460E/$File/p27366.pdf) and [http://www.agcm.it/dotcmsCustom/tc/2024/1/getDominoAttach?urlStr=192.168.14.10:8080/C12560D000291394/0/98A6A6A0B5D44158C1258383004087DC/\\$File/p27440.pdf](http://www.agcm.it/dotcmsCustom/tc/2024/1/getDominoAttach?urlStr=192.168.14.10:8080/C12560D000291394/0/98A6A6A0B5D44158C1258383004087DC/$File/p27440.pdf), accessed 2 April 2019.

5 Article 10 of the Legislative Decree no. 203 of 7 December 2017 mandates the AGCOM to issue a regulation introducing the first State-made classification system for video games. On 11 April 2018 AGCOM issued a draft regulation and opened a public consultation on that draft. The consultation is now closed. However, no regulation has been published yet and, in the meanwhile, a ‘technical’ working group was established to further discuss the proposed new regulation.

6 For further details see section 2.3 below.

7 As mentioned in the body of the article, the word ‘gambling’ is here being used loosely and merely for the purpose of giving an idea of the kind of activities that the legislator/regulator has in mind, namely skill and competition-based games for which a monetary reward is provided.

2. Analysis of the regulatory framework

2.1. The prize competition regulation

Under the current legislative and regulatory framework, the Esports industry could potentially face several burdensome obstacles, depending mostly on how competitive Etournaments are structured and organized.

To begin with, it is crucial to assess whether or not the prize competitions regulation applies to such events at all. Article 1 of this regulation provides for a set of rules regulating ‘competitions and prize operations of any kind’ which are defined as ‘promises of a prize made to the public and aimed at promoting, within the territory of the State, the knowledge of products, services, companies, signs or brands or the sale of certain products or the performance of services, having, however, also some commercial purpose’.

What is most interesting to note about the definition of competition and prize operations provided by the prize competition regulation is that it requires that the competitive event in question pursues a *promotional purpose* with regard to certain products, services or brands. The problem with this definition in relation to Esports lies in the fact that, on the one hand, a competitive gaming tournament may be organized by persons other than the publisher or developer of a video game (e.g., a company specialized in the organization and management of competitive events in general), so that no evident direct promotional purpose may be garnered therefrom and thereby presumably excluding Esports from the scope of application of Decree no. 430/2001. However, supposing that the very same Esports tournament were organized by the developer or publisher of the video game – that is, the person or entity holding exclusive intellectual property rights over the game itself – would it be reasonable to conclude that such circumstance would be decisive in determining the existence of an *inherent* promotional purpose within the Etournament? Or, for example, given the importance, also in terms of economic value generated by offline Etournament events *per se*, should we regard the overall value of the event as prevailing over the arguably indirect promotional purpose? These are some of the questions to which – as of yet – no straightforward answers may be given.

And yet, the implications of the applicability of the prize competition regulation to an Etournament in Italy are meaningful in that the prize competition regulation requires that a specific procedure and rules be

followed, which involve a number of foreclosures, *most notably that the contest cannot provide cash prizes*.

The situation should be easier in relation to Etournaments promoted by entities that don’t have their registered office in Italy, but in another EU member state given that the Italian Ministry for Economic Development issued new guidelines⁸ which have significantly restricted the scope of application of the prize competition regulation by excluding from its remit pan-European competitions that: (i) are organized by companies having their registered offices in an EU member state other than Italy, and (ii) do not involve any purchase at a point of sale that is located within the Italian territory. In particular, when considering the impact of such guidelines (which, however, it should be remembered, are not law), it would seem that the prize competition regulation should only apply, in principle, to those competitions which are promoted by an Italian sponsor or by a sponsor having its registered office in an ex-EU State (e.g., in the US), but not in relation to Esports competitions that meet both conditions under (i) and (ii) above.

2.2. State exclusivity on regulation of games: the gambling regulation

Even though the application of the prize competition regulation to Esports might be tentatively excluded, Legislative Decree no. 496/1948, the so-called gambling regulation on ‘organization and exercise of games of skill and competitions, for which a reward of any kind is given and for the participation of which payment of a monetary stake is required’ (Article 1) must be considered. The gambling regulation may potentially impact on any Esports tournament or activities that involve both the offering of a *reward* and also contemplate a *monetary stake* in order to enter the game.

Such activities are reserved, under Article 6 of the same regulation, to the Italian National Olympic Committee (henceforth ‘CONI’) if they are connected to sporting events organized or performed under the control of the CONI itself. In particular, the CONI handles the activities within its area of jurisdiction, directly or through the support of specific entities recognized by it, which are aimed at promoting the diffusion of sport-related activities (so-called ‘sport promotion bodies’ or ‘SPBs’). However, it is unclear what exactly this area of jurisdiction would cover.

It would seem that the main distinguishing factor is whether or not an activity should be considered a ‘sport’ or not. Indeed, if an activity is recognized as a ‘traditional’ sport, the CONI would form a federation

8 The latest version of the guidelines was updated on 11 March 2019 and is available (only) in Italian at the following link: <https://www.mise.gov.it/>

[images/stories/documenti/FAQ-ultimo-11-marzo2019.pdf](https://www.mise.gov.it/images/stories/documenti/FAQ-ultimo-11-marzo2019.pdf), accessed 2 April 2019.

with powers to oversee the organization and management of the sport.⁹ On the other hand, if an activity is not formally and officially recognized as a ‘sport’ in the traditional meaning specified above, then the current legislation leaves a wide margin to the CONI to decide, together with the aforesaid SPBs, whether or not an activity should be considered to fall within its jurisdiction. The scope of application of the gambling regulation is, therefore, vague and uncertain at best, given the circularity affecting the way in which the provision has been worded.

The reality of what occurs in practice is no less unclear, given that the CONI has not formally recognized competitive videogaming as a ‘sport’ activity; yet, both the ASI and the MSP – that is, two sport promotion bodies which have both been recognized by the CONI – include competitive videogaming among their listed sport activities. It would also appear that the organization of the Etournaments is in turn delegated by the SPBs to a specific association (the ‘GEC’ association for ASI and the ‘ITeSPA’ association for MSP) and, indeed, Etournaments are in fact organized, and do take place, under the *aegis* of such associations. Consequently, *prima facie* it would appear that the promotion of Esports by associations that are affiliated with the CONI is such as to bring Esports themselves within the jurisdiction of the Committee pursuant to Article 6 of the gambling regulation, thereby as a result, excluding the jurisdiction of both the Customs and Monopolies Agency (henceforth also ‘ADM’, an acronym for *Agenzia Dogane e Monopoli*) under the gambling regulation and the Ministry for Economic Development under the prize competition regulation. However, absent a clear and formal decision that competitive videogaming is a ‘sport’ for the purposes of Italian legislation and regulation that could justify competitive videogaming falling under the jurisdiction of the CONI, the organization of any Esports activity that involves a reward and also contemplates a monetary stake, should in principle, then, be regarded as a ‘regulated activity’ falling within the state monopoly, created by the gambling regulation, thus requiring an authorization from the state to be lawfully

carried out, failing which potentially serious sanctions may be triggered.

In such a scenario, therefore, one could plausibly come to the conclusion that the organization of Esports activities and events involving an entry fee or costs of some kind for the player to participate in a tournament are likely to trigger the applicability of the gambling regulation and should, therefore, be authorized by the state via the ADM. However, given the lack of rules concerning the specific type of authorization that would be needed in connection with the organization of Esports tournaments, it remains unclear how an interested party would have to go about seeking, and hopefully obtaining one, and on what terms any such authorizations would have to be granted, and therefore how a diligent actor could actually be sure of its complaint status, when engaging in Esports activities subject to Italian law.

Interestingly, the current system raises also the question, for instance, whether – absent a decision that competitive videogaming is a ‘sport’ – the (often, annual) association fee that must be paid by the Esports players to be able to participate in Esports competitions organized under the *aegis* of GEC or ITeSPA may or should be regarded as a ‘stake’ (i.e., the ‘payment of a monetary sum’) for the purposes of the gambling regulation, which would have the consequence of making (squarely) unlawful the organization of any such Esports tournament that offers a ‘reward of any kind’ in accordance with the gambling regulation.

2.3. The advertising ban

The so-called advertising ban forbids any form of direct and *indirect* advertising related to betting activities, gambling and *other forms of games with cash winnings*, including – starting from 1 January 2019 – any sponsorship of such activities and any other forms of communication with a promotional content.

Therefore, potentially, the ban has an impact not only on the advertising of those activities falling under the gambling regulation,¹⁰ but also on any other gaming activity providing *cash winnings*.¹¹

9 According to Article 15, para 2 of Legislative Decree no. 242/1999, national sports federations are defined as private associations endowed with legal personality which are subject to the provisions of the Italian Civil Code. Federations do not pursue a lucrative purpose and their essential function is the overall management of a given sports discipline (e.g., the *Federazione Italiana Giuoco Calcio* – FIGC is the Italian federation that oversees and organizes football activities in Italy both at a professional level – e.g. via the *Serie A* and *Serie B* leagues – as well as at amateur level via the so-called *Lega Nazionale Dilettanti*). Federations remain subject to the (to an extent) control of the CONI, inasmuch as the abovementioned article provides that federations carry out sporting activities in compliance with the direction followed by the CONI and the balance sheets of the federation are subject to annual approval by the CONI.

10 I.e., Legislative Decree no. 496/1948, on which see section 2.2 above.

11 However, the AGCOM, which is the Regulatory Authority responsible for enforcing the gambling ban, opened a public consultation which provided specific questions in relation to how this new piece of legislation should be interpreted with a view of issuing specific guidelines and, potentially, narrowing down the scope of the ban. The public consultation was published on 10 December 2018 and was followed by a round of interviews of the stakeholders which ended at the beginning of 2019. The text of the public consultation is available only in Italian here: <https://www.agcom.it/documents/10179/12703523/Delibera+579-18-CONS/79ed8277-1ba5-4f1d-a1f0-dd6ee4c0f6d4?version=1.0>, accessed 11 April 2019.

The issue of such a regulation, potentially representing a stumbling rock for the flourishing of the Esports industry in Italy, on the basis that Esports tournaments often provide cash winnings, demonstrates how little understanding the Italian government has of competitive videogaming and how far it is from issuing a comprehensive regulation related to Esports, which takes into account all the interests involved for the benefit of the community at large.

Against this messy (to be generous) background, given the size of the opportunity competitive videogaming represents in Italy, one would have hoped the Italian government had a plan to address this issue, by introducing new rules to ensure transparency and a level playing field for all those entrepreneurs who are willing to invest time and efforts to contribute to the development of the Italian Esports ecosystem.¹² However, as of April 2019 when this piece is being written, we are not aware of any such plans.

3. Looking for possible solutions (with an eye to other countries' experiences)

Considering the poverty of the regulatory framework which the Italian legislator has reserved for Esports, we now turn to consider how other jurisdictions have approached the regulation of Esports activities and events. Such a comparison may suggest how a possible regulatory model could work in Italy, albeit with relevant adaptations.

As things stand, in our view the legislator has two options: to treat competitive videogaming as a *traditional* sport and leave the organization of Esports events to a designated Esports federation or to treat it as a unique situation and issue a *sui generis* regulation which will

allow the Esports industry to function without getting caught up in the very broadly worded state monopoly provided by the gambling regulation.

3.1. Organize Esports activities applying a quasi-federation model

As we have already mentioned, presently in Italy competitive videogaming is not officially recognized as a 'sport' but is merely listed amongst 'sports activities' by a few sport promotion bodies,¹³ which leaves us with a great deal of uncertainty as to whether or not it should fall under the exclusive jurisdiction of the CONI. In fact, lacking a federation, the organization of activities related to Esports cannot count on an organized structure and has, in fact, no designated reference point.

This situation is unlikely to change in the short term, especially given the concerns the International Olympic Committee (IOC) has expressed about the possibility that Esports may be recognized as 'sports' due to the lack of compatibility of some e-games with the Olympic values.^{14, 15}

In fact, according to the CONI bylaws,¹⁶ one of the requirements in order for an entity to be recognized as a federation, is that it should: (i) be affiliated with an international federation recognized by the ICO, if there is one, which is not the case here, and (ii) operate in accordance with the rules of the relevant International federation and those of the Olympic Charter. These conditions should not constitute a problem *per se*, but of course the lack of an international federation together with the concerns expressed by the IOC makes it difficult, if at all possible, for the CONI to bear the responsibility of recognizing an Esports federation.¹⁷

12 Such a regulation should include some simple, clear, realistic and nonetheless much needed rules designed to regulate the organization of competitive videogaming tournaments with a view to ensuring key interests and objectives, such as the protection of minors, the economic freedom, the intellectual property rights of the respective owners etc.

13 See section 2.2 above.

14 Thomas Bach, President of the IOC during the 7th Olympic Summit held in Lausanne on 8 December 2018 stated that at the summit it was agreed that the 'Olympic Movement should continue to engage with this [Esports] community, whilst at the same time acknowledging that uncertainties remain' and then further stated that 'it was noted that some e-games are not compatible with the Olympic values and therefore cooperation with them is excluded': <https://www.olympic.org/news/communique-of-the-7th-olympic-summit>, accessed 2 April 2019. However, it should be taken into consideration that the IOC and The Global Association of International Sports Federations (GAISF) had shown an interest in engaging with the Esports community also co-hosting the Esports Forum on 21 July 2018, with an Esports Liaison Group having been established: <https://www.olympic.org/news/olympic-movement-esports-and-gaming-communities-meet-at-the-esports-forum>, accessed 2 April 2019.

15 Further steps towards recognition of Esports have been taken in Asia where the Olympic Council of Asia accepted as its affiliate the International E-Sport Federation (IESF) and Esports are likely to be featuring

as a medal event at the 2022 Asian Games, after participating at the 2018 Asian Games as a demonstration sport (i.e., medals won in Esports did not count in the official overall medal tally).

16 Article 21 of the Bylaws of CONI adopted on 11 June 2014 provides that: 'CONI recognizes national sports federations that meet the following requirements: (a) carrying out, within the national territory and at the International level, a sporting activity, including the participation in competitions and the implementation of training programmes for athletes and technicians; (b) affiliation with an international federation recognized by the IOC, if any, and management of the activity in accordance with the Olympic Charter and the rules of the international federation to which it belongs; (c) statutory and regulatory system inspired by the principle of internal democracy and participation in sporting activities by women and men on equal terms and equal opportunities, as well as in accordance with the resolutions and guidelines of the IOC and CONI; (d) electoral procedures and composition of the governing bodies in accordance with the provisions of art. 16, paragraph 2, of Legislative Decree no. 242 of 23 July 1999, and following amendments and additions [...]'.
17 With respect to the complexity related to establishing an Esports federation, see also A. Coni, 'Reality is broken: videogaming as a new form of sport. The accession of Esports' (2016) *Rivista di diritto ed economia dello sport* 1/2016.

However, even assuming that a federation of this type could be recognized, and legitimately operate, in Italy even without the need for the international recognition of competitive videogaming as a 'sport', the fundamental question remains: is the (Esports) federation model the best solution to drive the development of the local Esports industry? As already mentioned, unlike traditional sports, competitive videogaming is faced with the existence, and therefore the management of intellectual property rights embedded in the video game at hand.

In particular, the *games* played in traditional sports activities such as football or boxing are not covered as such by intellectual property rights that could be enforced by the owners to *exclude* (unauthorized) third parties from using their games. However, the same cannot be said for Esports, where e-games are in fact covered by a variety of intellectual property rights, including copyright and trademarks, belonging to an organization or individual. Furthermore, the playing of e-games is subject to the rules of gameplay and mechanics which are, in any event, set by, and, in general terms, under the legitimate control of, developers or publishers.

In our view, a federation model designed off the model applied in the traditional sports industry may not necessarily be best placed to manage the intertwining intellectual property rights within the context of Esports activities such as tournaments and competitions as the legitimate owners of the rights to an e-game may well be reluctant to give away their control over their creations, subject to any anti-trust law limitations.

To further explore this point, we will now look at the South Korean experience of the Korea e-Sports Association (hereinafter 'KeSPA').

a. The Korean model: KESPA and the Blizzard case

South Korea has an Esports association specifically devoted to managing Esports in the country: KeSPA is responsible for organizing competitive videogaming events, including competitions, tournaments and the broadcasting thereof, as well as managing activities related to the Korean Esports industry. KeSPA was

founded nearly 20 years ago by the Korean Ministry of Culture, Sports and Tourism and is a member of the Korean Sports & Olympic Committee¹⁸ and, hence, is inherently bound to the Korean State.

The Korean model suggests the existence of an official state-recognized association integrated within the membership of the national Korean sports regulator, which in turn appears to be subsumed within the jurisdiction of the Korean Sport & Olympic Committee. The first point to note here, however, is that in South Korea, and in South-East Asia in general, the debate over whether Esports should be considered 'sports' is now arguably outdated and Esports have already featured in the Asian Games of 2018 as a demonstration sport and are likely to be recognized as medal events on a par with traditional sports for the purpose of the 2022 Asian Games.¹⁹

Furthermore, the apparent simplicity of the Korean model actually betrays its own naivety in matters concerning the protection of intellectual property rights; indeed, towards the end of the last decade KeSPA found itself engaged in a lawsuit with major American video game developer Blizzard concerning the regulation of intellectual property rights over the use of the Blizzard-developed video game *Starcraft* within the Korean Esports scene.²⁰

The conflict was particularly acute with respect to the issue of broadcasting rights and derivative works resulting from the video game's implementation within the Esports context. The matter was finally settled²¹ but it does not appear that Blizzard was particularly happy with the outcome of the prolonged negotiations with KeSPA, inasmuch as according to Internet hearsay the developer claimed to be seeking a partner other than KeSPA for the Esports promotion of its sequel *Starcraft II* in South Korea.

In our view, the KeSPA experience shows, in essence, that, even in a country like South Korea, where competitive videogaming has long been recognized as a 'sport', a state-controlled federation model is unlikely to be able to get away with the developers' intellectual property rights to *their* video games, around which Esports revolve. All of which tends to discourage the adoption of a similar model in Italy.

18 In 2017 KeSPA was downgraded from 'official member' to 'reserved member' of the Korean Sports & Olympic Committee, after failing to meet the (new) requirements of the Korean Sports & Olympic Committee. See http://e-sports.or.kr/board_kespa2014.php?b_no=6&_module=data&_page=view&b_pid=9999527500&ckattempt=2, accessed 2 April 2019.

19 Although Esports was announced as a medal event for the 2022 Games, the Olympic Council of Asia (OCA) has announced that the inclusion of competitive videogaming as a medal sport is still on hold for the 2022 Asian Games. In any event, the participation is likely to be limited

to non-violent e-games. See <https://www.reuters.com/article/us-games-asia-alisports/esports-move-to-less-violent-games-for-2022-asiad-alisport-ceo-idUSKCN1LI0RI>, accessed 2 April 2019.

20 See http://www.koreatimes.co.kr/www/tech/2010/10/129_75165.html, accessed 11 April 2019.

21 However, the details of the settlement agreement reached by the parties are unknown, except for what has been made available via Internet hearsay.

3.2. Issuing a *sui generis* regulation for Esports

As evidenced by the analysis of the Italian legislative and regulatory framework,²² given that the organization of games of skills activities that entail an entry fee (stake) and a reward is reserved to the state, if we treat Esports as something that is not a sport falling within the jurisdiction of the CONI, it would be necessary to seek state authorization in order to organize such activities.

However, the current authorization model is structured to meet the requirements of skill games and betting, which differs significantly from Esports.

In fact, the ADM, which is the state agency responsible for issuing authorizations to operate such activities, offers guidelines in relation to specific games of skills and betting,²³ but does not provide general rules suitable for all games of skill, nor, of course, does it provide specific rules applicable to Esports (and on how to obtain an authorization).

Against this background, a solution ensuring the state has enough control over competitive videogaming activities without unnecessary red tape – which is unfortunately commonly found in Italian legislation and regulation, and which could discourage players of this industry from entering the Italian market – seems the most appropriate for Italy.

The recently introduced French Esports regulation, in our view, represents a good example of a balanced solution that is respectful of the developers' intellectual property rights, by providing some rules that allow for flexibility and visibility by the state as well as general transparency.

a. The French model

The French model²⁴ provides a basic regulatory framework dealing with, *inter alia*, participation of minors, the costs of organizing an Esports event and the hiring of professional players. What is most interesting, however, is that France has not created any association nor federation responsible for managing Esports events.

Indeed, quite simply, the French model has introduced a system based on a notification that any company or association, which intends to organize an Esports event, is required to notify the French Interior Ministry within a prescribed time limit that an Esports event is scheduled

to take place. Such notification is effectively a declaration made by the company/companies concerned and its content requirements are regulated by the law itself.²⁵

In other words, the system is run directly by the private organizations organizing the events and, provided the required notification/declaration is made to the French state in accordance with the law, the Esports event may lawfully take place.

In essence, the solution taken by France skirts the most contentious issues concerning the nature of competitive videogaming and resolves them by providing that any sports event organizer should simply proceed with the abovementioned declaration. Undoubtedly, this is a system that would *prima facie* involve little effort and would not in any case require regulatory intervention by the competent French sports regulator.

With that being said, it cannot be ignored that the French model has been more recently introduced, that is, less than two years ago at the time of writing and as of yet has remained untested, thus markedly differentiating it from the Korean solution which has faced – and, to some extent, supposedly overcome – several difficulties and challenges (as described above by way of example in relation to the Blizzard issue).

Furthermore, the solution proposed by France may provide a practical structure via which to operate but it does not deal with the theoretical issues deriving from the protection of exclusive intellectual property rights over works (i.e., video games) that are *de facto* being used and exploited for profit as part of planned events organized by entities different to the developer or publisher of the video games themselves. Possibly these may be issues that would be dealt with on a case-by-case basis by each of the organizing companies as a result of negotiations with the rights-holder(s), but the steadfastness of the system as a whole remains unchallenged.

4. Conclusions

What is clear about the Italian regulatory framework surrounding Esports is that, as it stands, it does not fit the needs of a ready to take-off Esports industry and appears to be extremely fragile in the face of possible issues, which should arise from the expected and wished for growth of the Esports industry (also) in Italy.

²² For further analysis see section 2 above.

²³ Guidelines and specific legal references are available on the ADM website (<https://www.adm.gov.it/>) in relation to, e.g., fixed odds betting; instant lotteries; bets on horse races; SuperEnalotto; Totogol; Totocalcio etc.

²⁴ In France Esports competitions are regulated by Law no. 2016-1321 of 7 October 2016, Decree n. 2017-871 of 9 May 2017 and Decree no. 2017-872 of 9 May 2017.

²⁵ Briefly, such contents include details about the organizer, basic information about the competition such as the venue, the dates and games played, the registration fees, the mechanism guaranteeing the repayment of the prizes and, if applicable, the contact details of those responsible for the safety of the event.

The very outdated Italian gambling regulation, together with the heavy bureaucracy surrounding prize competitions and a revamped concern regarding gaming disorders, is likely to scare Esports industry operators from investing in Italy in the absence of legislative intervention. This would be the case regardless of whether the legislator decides to treat competitive videogaming as a *traditional* sport or to issue a *sui generis* regulation.

Furthermore, our study shows how the French flexible approach would seem to represent a better solution in order to face the challenges relating to Esports, compared to the heavily governmentalized approach taken by South Korea. This is because, in general, such an approach appears to be better suited to receive different inputs coming from industry operators and could stimulate a constructive dialogue between those operators and publishers in relation to the management of intellectual property rights with respect to Esports events.

Additionally, it should be evidenced that Italy, unlike South Korea, does not have a strong competitive videogaming tradition, so it is unsurprising that an entity enjoying an industry knowledge similar to KeSPA does not exist and even if it did, inevitably, any Italian equivalent would be unlikely to be trusted straightaway by developers and publishers.

We believe that a possible way forward would be to provide a lighter type of regulation, along the lines of the French example, which, when it comes to the organization of Esports events, provides for a notification process with only potential broader inspections on an *ex post* and ‘as needed’ basis. Conversely, it would be desirable for the government to introduce rules addressing those important – but still unresolved – issues, including tax, employment and immigration law issues affecting e-athletes that may otherwise discourage the development of the industry in Italy.