

THE COUNCIL OF STATE UPHOLDS THE POSITION OF THE MUNICIPALITY OF FLORENCE: TEMPORARY USE OF STUDENT RESIDENCES AS HOSTELS ONLY UNDER SPECIFIC LIMITATIONS

The actions brought before the Regional Administrative Court for Tuscany.

The case at issue arises from the filing of a SCIA (Notice of Certified Commencement of Activity under Italian administrative law) aimed at initiating summer hostel activities, limited to a period of four months during the year 2023, by a company managing a building designated as a student residence in Florence. That filing was followed by the submission of a variation SCIA, intended to introduce the provision of food and beverages to guests, in relation to the summer opening planned for the subsequent 2024 season.

The Municipality of Florence opposed such request, considering the SCIA filed in 2023 to have lost its effectiveness, as it concerned a temporary activity, and maintaining that, with regard to the 2024 season, a new SCIA would be required. The municipal administration further specified that, in 2024, hostel activities within a structure designated as a student residence could be carried out for a maximum period of two months. In this respect, it referred to the provision contained in the Technical Implementation Rules (Norme Tecniche di Attuazione – NTA) of the new Operational Plan (Piano Operativo – PO), adopted on 13 March 2023 and subject to safeguard measures pursuant to Article 103 of Regional Law of Tuscany No 65/2014, which allows the establishment of temporary hostels for such period and only during the months of July and August.

The company challenged that refusal before the Regional Administrative Court for Tuscany, claiming, first, that the hostel activity should be classified as seasonal, and therefore repetitive and not merely temporary, with the result that the filing of a new SCIA would be superfluous.

Secondly, it alleged the unlawful application of the two-month limit introduced by the new Operational Plan in place of the previous three-month limit, arguing that the new PO, having merely been adopted and not yet finally approved, could not *ratione temporis* apply to the present case. Consequently, it pleaded the derivative unlawfulness of the SUAP measure, which was based on an ineffective PO, and further challenged the PO itself, in so far as it failed to recognise student residences as accommodation facilities, thereby limiting their use for hostel purposes to a maximum of two months.

During the pendency of the proceedings, the company filed a new SCIA for the summer hostel activity for the 2024 season. By SUAP decision, the Municipality

took note of that filing, once again referring to the provision of the NTA of the PO which allows the operation of temporary hostels in student residences for a maximum of sixty days, exclusively during the months of July and August. The Municipality accordingly invited the company, within thirty days, to amend the SCIA by indicating as the period of opening only the months of July and August 2024.

The company therefore also challenged that measure, as well as the resolution adopting the PO, alleging their unlawfulness.

In parallel, the company initiated separate proceedings concerning a second student residence under its management. In particular, it challenged the SUAP decision by which the Municipality of Florence had imposed, for the year 2024, the limitation of the opening of the temporary hostel activity in that second structure to the months of July and August only, by applying the same provision of the NTA of the new PO adopted and subject to safeguard measures.

In this case as well, the company maintained that the hostel activity carried out in the second structure should be classified as seasonal, and therefore already validly in place by virtue of a previous SCIA filed in 2023.

Lastly, the company filed a further SCIA for the exercise of hostel activities in the summer season of 2024, for a period of three months. By SUAP decision of 4 April 2024, the Municipality once again applied Article 19(4.2) of the NTA of the PO adopted and subject to safeguard measures, inviting the company to bring its activity into conformity with the requirements of that provision.

By way of additional grounds of complaint, the company also challenged that latest decision and the resolution adopting the PO, reiterating the same pleas already raised in the first proceedings.

The judgments of the Regional Administrative Court for Tuscany

The Regional Administrative Court for Tuscany ruled, by means of two separate judgments, on the complaints lodged by the company. In particular, it upheld the pleas concerning the premature application of the Operational Plan adopted to the case at issue, declaring that the latter fell outside the scope of the safeguard measures provided for in Article 103 of Regional Law No 65/2014 of Tuscany, and that such provisions could not affect the legal position of the claimant company. Conversely, it dismissed the grounds of complaint concerning the classification of hostel activities as seasonal, holding that their classification as temporary was correct, and partially annulled the contested municipal measures.

The decision of the Council of State

Against the judgments of the Regional Administrative Court, the company lodged two separate appeals which, as they concerned the same legal issues, were joined.

First, the company complained of the failure to uphold its submissions regarding the recognition of the seasonal nature of the commercial SCIA notices it had filed. The Council of State, having noted that the two facilities operated by the company

are student residences, observed that those facilities do not have a tourist-accommodation use, but rather a managerial use, being classified more precisely as private service activities for temporary accommodation other than accommodation facilities, such as student residences, colleges, convents and guesthouses with shared services.

The temporary use authorised by the administration as a hostel, during periods of lower student attendance, does not in any way alter their destination, which remains that of student residence. Consequently, the provisions laid down in Article 49 of Regional Law of Tuscany No 61/2024, relating to the opening periods — in excess of two months — of accommodation facilities in the strict sense, namely facilities with a tourist-accommodation use, do not apply.

The appellate court therefore held that the facilities under consideration must be subject to the rules laid down in the 2015 Urban Planning Regulation and the related Technical Implementation Rules, which, in Article 19(4.2), allow temporary tourist-accommodation use for a maximum of three months per year, even if not consecutive, without changing the designated use (currently only the months of July and August).

The Council of State further specified that, since the case concerns the temporary use as hostels of facilities permanently assigned to other, non-tourist-accommodation activities, a commercial SCIA must be filed each year, given that such temporary use is limited to the maximum three-month period provided for by the aforementioned planning instrument.

Concluding remarks

The judgment at issue confirms the lawfulness of the policies pursued by the Municipality of Florence, in particular with regard to the regulation of student residences, which may be used temporarily as hostels only under specific limitations. In particular, hostel-type accommodation must be classified as temporary — and not as seasonal — and is currently permitted only within the maximum limit of 60 days.

DISCLAIMER

The sole purpose of this *Client Alert* is to provide general information. Consequently, it does not represent a legal opinion nor can it in any way be considered as a substitute for specific legal advice.

3

Laura Sommaruga, Partner
Email: laura.sommaruga@grplex.com

Federico Ianeselli, Senior Associate
Email: federico.ianeselli@grplex.com

Sandra Sacchi, Junior Associate
Email: sandra.sacchi@grplex.com