

# CMI International Working Group on Maritime Decarbonisation

*“Liability and compensation regimes for incidents on board vessels involving the carriage or consumption of alternative fuels”*

**Green Fuels Gothenburg Discussion Paper 4 June 2024**

## **Request For Feedback from National MLAs**

### **Responses of the Italian MLA**



**1. Does your country have any existing specific law or legislation that might deal with liability for alternative fuels (apart from general tort/delictual law, or global limitation provisions for maritime claims)?**

In the Italian legal system, a specific framework exists concerning civil liability for environmental damage, which supplements the general regime of liability for unlawful acts.

Civil liability for environmental damage is governed by Legislative Decree No. 152 of April 3, 2006 (hereinafter Environmental Code). Part VI of the Environmental Code, which implements Directive 2004/35/EC into Italian law, introduces the "polluter pays" principle and lays down rules for preventing and remediating environmental damage to natural resources, water, and biodiversity.

Although not specifically designed to regulate liabilities arising from the use and transport of alternative fuels, it can be argued that such liabilities fall within its scope of application.

Part VI of the Environmental Code focuses on regulating civil liability for environmental damage, defined as *"any significant and measurable deterioration, direct or indirect, of a natural resource or the utility provided by it"* (Art. 300, paragraph 1), including *"deterioration, compared to the original conditions, caused [...] c) to coastal waters and waters within the territorial sea through the aforementioned actions, even if carried out in international waters"* (Art. 300, paragraph 2).

The Environmental Code provides (Art. 298bis):

- i. **Strict liability** for environmental damage caused by one of the professional activities listed in Annex 5 of the same Part VI and for any imminent threat of such damage arising from said activities. Professional activities include the maritime transport of dangerous goods or polluting goods as defined

by Council Directive 93/75/EC of September 13, 1993 (Art. 298bis, paragraph 1, letter a)). This Directive refers to the MARPOL Convention for identifying dangerous or polluting goods.

- ii. **Liability for willful misconduct or negligence** for any environmental damage arising from activities other than those listed above under (i).

The transport of alternative fuels (excluding their use as bunker fuel) could therefore expose the shipowner to strict liability if such fuels fall under the classification of *dangerous or polluting goods* defined by MARPOL. Conversely, the use of alternative fuels as bunker fuel and the transport of alternative fuels not falling within MARPOL definitions expose the shipowner to civil liability for environmental damage only if pollution results from willful misconduct or negligence.

Regarding restoration/ compensation obligations imposed on the polluter, in accordance with the “*polluter pays*” principle, the Environmental Code provides that:

- i. The responsible party must adopt *preventive measures*, i.e., appropriate initiatives to control, contain, eliminate, or otherwise manage any risk factor immediately, to prevent or limit further environmental damage.
- ii. If damage occurs, the responsible party must implement *remedial measures*, where remediation is achieved by restoring the damaged environment to its original condition through primary, complementary, and compensatory remediation, understood as follows:
  - **“Primary” remediation:** any remediation measures restoring the damaged natural resources/services to or toward their original conditions.
  - **“Complementary” remediation:** remediation measures taken concerning natural resources/services to compensate for the incomplete restoration of the damaged natural resources/services.
  - **“Compensatory” remediation:** actions taken to compensate for the temporary loss of natural resources/services from the time of damage until primary remediation has produced a full effect.
- iii. If the responsible party fails to act, or the adopted measures are considered insufficient, the Ministry may:
  - **Intervene directly** to implement such measures and recover the costs from the responsible party (Art. 311).
  - **Assess the environmental damage** and quantify the costs, proceeding against the responsible party for payment.

Following almost to the letter what is established in Article 4, paragraph 3 of Directive 2004/35/EC, the Environmental Code states that the provisions of Part VI apply “[...] *without prejudice to the right of the tortfeasor to limit his liability in accordance with national legislation implementing the Convention on Limitation of Liability for Maritime Claims (LLMC), 1976, or the Strasbourg Convention on Limitation of Liability in Inland Navigation (CLNI), 1988*” (Art. 303).

In this regard, although the Italian Parliament, through Law No. 201 of December 23, 2009, authorized the Government to ratify the London Convention of September 19, 1976, as amended by the 1996 London Protocol, Italy has not yet proceeded with ratification and is therefore not currently a party to any international uniform law instruments on maritime claims limitation.

The Italian limitation regime is detailed in the responses of the Italian MLA to the CMI Questionnaire on Unified Interpretation for standard to break limitation under IMO Conventions (<https://comitemaritime.org/wp-content/uploads/2017/07/CMI-Unified-interpretation-questionnaire.pdf>). Reference is made to the said responses, and particularly to the response to Question 4, which is transcribed below in *Italics* for ease of reference.

*Pursuant to Art. 7 c.n. [Codice della Navigazione] limitation of shipowner's liability is governed by the law of the flag State. Italian provisions on limitation of liability – therefore – only apply to Italian flag ships.*

*Under art. 275 c.n. the owner of a ship of less than 300 GRT is entitled to limit his liability for all obligations contracted in occasion or for the needs of a voyage or for facts and acts made during the same. No right of limitation applies when said obligations derive from personal gross negligence and willful misconduct of the owner. Art. 275 c.n. provides that the limit corresponds to the value of the ship at the end of the voyage or when limitation is requested. But art. 276 c.n. specifies that, if at the end of the voyage the value of the ship is higher than 2/5 of her value at the beginning of the voyage, liability is limited to 2/5 of the value at the beginning of the voyage. Conversely, if the value at the end of the voyage is lower than 1/5 of the value at the beginning of voyage, liability is still limited to 1/5 of the value at the beginning of the voyage. The peculiar feature of this complicated system of limitation is represented by the fact that same is based on the value of the ship, a parameter which most jurisdictions decided to abandon in favor of the tonnage based regime adopted by international instruments, namely the 1957 Limitation Convention and then the LLMC 1976/1996. Arts 620 to 641 of c.n. govern the procedure for limitation. The benefit of limitation is made conditional to the constitution of a limitation fund up the invoked limit. For the purpose of limitation, it is assumed that the value of the ship corresponds to her agreed value in the insurance policy.*

*As a matter of fact, Italy has not ratified the LLMC 1996. Nevertheless, with Legislative Decree (L.D.) 28.06.2012 No. 111 – implementing Directive 2009/20/EC of 23 April 2009 on insurance of shipowners for maritime claims - in an attempt to adapt Italian legislation to the LLMC standards, a new system of limitation for ships over 300 GRT (i.e. those ships to which LLMC 1996 is applicable) was introduced in Italy.*

*Art. 7 of L.D. 111/2012 – under the title “general limits” - substantially reproduces the text of Art. 6 of LLMC 1996 in its original wording, i.e. prior to the increase of the respective limits, entered into force on 19.04.2015 pursuant to IMO Resolution of 19.04.2012. Art. 7 applies not only to the specific maritime claims enumerated under Art. 2 of LLMC 1996, but generally to all maritime claims, with the exception of passengers' claims for personal injury and loss of life.*

*Limitation of liability for passengers' claim for personal injury and loss of life is governed by Art. 8 of L.D. 111/2012. This also substantially reproduces the wording of art. 7 of LLMC 96, setting out the limit – for a single event - of 175,000 SDR multiplied by the number of passengers which the ship is authorized to carry according to the ship's certificate.*

*Unlike LLMC 1996 and art. 275 c.n., L.D. 111/2012 does not contain provisions barring limitation in case of willful misconduct, recklessness or gross negligence of the ship owner.*

*While this system of limitation has not been tested so far by case law, scholars and commentators have expressed criticism to the limitation provisions under Arts. 7 and 8 of L.D. 111/2012, due to the remaining inconsistencies with the international regime of LLMC 96 doubts have also been expressed as to the actual viability of the system, due to the fact that no special procedural rules for its actual implementation have so far been adopted, while doubts have been raised as to the possibility to adapt the limitation procedures under arts. 620-641 c.n. to the newly introduced tonnage based limitation<sup>1</sup>.*

*The Italian Maritime Law Association has urged the Italian Government to promote the adoption of a comprehensive substantial and procedural legislation for the implementation in Italy of the LLMC 1996 system in its entirety. Pending this, the issue of limitation of liability in Italy remains problematic.*

## **2. If so, please provide the reference to and a copy of the specific legislation or a link thereto.**

We provide the link to the Environmental Code (<https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2006-04-03;152>) and Directive 2004/35/EC (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0035>), which forms the basis for the regulation of

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<sup>1</sup> With the preliminary ruling of Court of Nola, 14 February 2017, Dir. Mar. 2018, p. 178, the limitation provisions under L.D. 111/2012 were disregarded and the owners of a ship exceeding 300 GRT were granted limitation under the domestic legislation based on the principle of analogy. This decision was challenged and the matter was settled out of court.

environmental damage compensation in the Environmental Code, and to the Italian Code of Navigation (<https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:regio.decreto:1942-03-30;327>) and to Legislative Decree No. 111 of June 28, 2012 (<https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2012;111>).

**3. If not, does your country have any plans to introduce legislation dealing with liability and compensation in respect of alternative fuels?**

There are currently no plans to introduce a special liability and compensation regime for alternative fuels in Italy.