



FIRST QUESTIONNAIRE FROM THE CMI MOBILE OFFSHORE RENEWABLES UNIT INTERNATIONAL WORKING GROUP – FALL 2024

Responses of the Italian MLA

I. Definition of Mobile Offshore Renewables Unit ('MORU')

MORUs are not specifically defined in the Italian legal framework of maritime law.

Nonetheless, MORUs have been recently concerned by acts adopted by the Italian Government in the context of a wider legislative framework aimed at supporting the production of electricity from renewable sources (*inter alia*, law no. 199/2021 implementing EU Directive 2018/2001 on the promotion of the use of energy from renewable sources).

More specifically, the Decree adopted on 19 June 2024 by the Italian Ministry of Environment and Energy Security explicitly refers to *'facilities powered by biogas and biomass, solar thermodynamic, geothermal power, off-shore wind, floating photovoltaic both off-shore and on inland waters and units powered by tidal, waves and other forms of marine energy, aimed at innovating and reducing the impact on the environment and the territory'* (see article 1.2 of the mentioned Decree).

Furthermore, the Decree defines

- a) *'plants powered by renewable sources'*, as *'all works and equipment, functionally interconnected, intended for the conversion of renewable energy into electrical power, including:*
 - i. *the works, buildings and machinery that allow direct use or the treatment of the renewable source and its subsequent use for the electricity production.*
 - ii. *electricity generation units, plant auxiliary services, transformers located upstream of the connection point or points to the electricity grid, as well as the electricity meters functional to the quantification of incentives'*;
- b) *'floating facilities'* as those *'erected on floating platforms anchored to the seabed through cable systems, without resorting to fixed foundations'*

Although this is a broader and more generic definition than that proposed by the MORU CMI IWG for the purposes of the present questionnaire, this definition seems to be consistent with its contents.

Another piece of legislation relevant not to the definition of MORUs but to their operation is Legislative Decree no. 201 of 17 October 2016, and subsequent

modifications, implementing EU Directive 2014/89 “establishing a framework for maritime spatial planning”.

II. Questions related to ownership and other property interests in MORUs.

II.1 Treatment of Domestic MORUs as property.

1. Would the courts in your jurisdiction, recognize any (or all) of the categories of MORU as a “vessel” or “ship” or other “marine equipment” or other special type of property? If so, please explain with reference to authorities.

The answer to the question is somewhat delicate. According to the domestic legal framework, the possibility of referring one or more categories of MORUs to the notions of “ship” (“*nave*”) or “mobile craft” (“*galleggiante mobile*”) contained in article 136 of the Italian Code of Navigation (Cod. Nav.) is indeed uncertain. It seems, in fact, difficult to argue that any of the categories of MORUs can be qualified as “ship”, since such floating offshore units lack not only an autonomous propulsion mechanism, but also the element of destination to navigation, which characterizes the notion of ship under paragraph 1 of the aforementioned provision. Furthermore, the possibility of qualifying the assets in question as mobile crafts – which, pursuant to paragraph 3 of article 136 Cod. Nav., are subject to a regime tending to be equated to that of ships intended for coastal navigation or employed in harbour services (so-called “*nave minore*” in Italian) – is strictly conditioned by the possibility of including a MORU’s functions within the “services relating to navigation or traffic”, a characterization which defines the movable assets in question both in paragraph 3 of article 136 Cod. Nav. and in the explanatory Ministerial Report (no. 89). Lacking Supreme Court precedents, the lower courts would seem to indicate a tendency to assess this inclusion broadly.

- a. Would the courts in your jurisdiction recognize any of the categories of MORU as a “vessel” or “ship” if it were equipped with an integrated dynamic positioning or other station-keeping system, (including any automated system, or remotely or autonomously directed system)?

It does not appear that such a mechanism could positively affect the qualification of any category of MORUs among ships or mobile crafts: rather, in some respects, it would bring the asset in question even closer to the category of fixed crafts.

2. Is it possible in your jurisdiction to record ownership interests in any (or all) of the categories of MORU in a public register?

The answer is subject to the classification of any of the categories of MORUs as “ship” or “mobile craft”: if so, the Italian Code of Navigation provides for the registration of ships in the registers (“*matricole*”) (article 146.1) and of mobile crafts in special registers (article 146.2).

- a. If so, would it be registered as a “vessel” or “ship” or other “marine equipment” or other special type of property? If so, please explain with reference to authorities.

See above. They could probably be entered in the registers of “*navi minori*” and crafts because of their plausible classification as mobile crafts.

- b. If so, would it be registered in your jurisdiction’s public register of ships, or in another public register?

They could probably be entered in the registers of “*navi minori*” and crafts because of their plausible classification as mobile crafts.

- c. If it is registered in your jurisdiction (whether as a “vessel” or “ship” or other “marine equipment” or other special type of property), would it be entitled to fly the flag of your jurisdiction and be deemed to have that nationality? If so, please explain with reference to authorities.

Yes. Although the provision of article 155 Cod. Nav. refers only to “ships”, it is deemed that the term has been used in a broad sense, including “ships”, in the strict sense, as well as mobile crafts. The provision states that ships entitled to sail under article 149 Cod. Nav. fly the Italian flag. In turn, article 149 Cod. Nav. enables “ships” to navigate by means of the issuance of the deed of nationality (article 150) and “*navi minori*” and “mobile crafts” by means of the issuance of a licence (“*licenza*”) (article 153).

3. Assuming that a MORU is the subject of leases, subleases, or charters (including demise charters) or sub-charters in your jurisdiction, is it possible to record such lease interests in any (or all) of the categories of MORU in a public register in your jurisdiction? If so, please describe. If so, please also describe the procedure to file such agreements or notice thereof.

In case the MORU under lease qualifies as a ship or a mobile craft the answer to the question would be in the affirmative. Although, pursuant to article 377 Cod. Nav., written proof of the conclusion of the contract (of lease) is not required for the lease of “*navi minori*” and mobile craft with a gross tonnage not exceeding ten tons, if self-propelled, or twenty-five, in any other case, this applies, indirectly, for the purposes of being effective as against third parties, which requires the contract to be entered in the register of the vessel or mobile craft. Moreover, it should be noted that, pursuant to the combined provisions of articles 265 and 270 Cod. Nav., in fact, whoever takes over the operation of a ship or a mobile craft must first state to be the operator at the register and the data accompanying this statement also include the title granting the right to use of the vessel. The statement is transcribed in the ships or mobile crafts’ register (article 271 Cod. Nav.). Pursuant to article 269 Cod. Nav., finally, a certified copy of the title conferring the right to use of the vessel must be

delivered together with the statement to be the operator.

4. In your jurisdiction, is the acceptance by a registrar or other governmental body of a MORU (or type of MORU) as a “ship” or “vessel” or equivalent term dispositive of its legal status as a “ship” or “vessel” or equivalent term under your law for purposes other than registration under domestic law?

To this end, it is worth noting that, pursuant to article 303 of the Regulations for the Execution of the Italian Code of Navigation (Maritime Navigation), the entry in the registers of ships or in the registers of “*navi minori*” and mobile crafts is determined by the head of the local office of the registry: this qualification gives the vessel the corresponding legal status (as a ship or mobile craft) for all aspects regulated by the Italian Code of Navigation and the relevant specific legislation.

5. Is it possible in your jurisdiction to record liens, maritime liens, claims, encumbrances (e.g. mortgages or hypothèques) against any such category of MORU in a public register? If so, please explain details and limitations on such register.

According to article 565 Cod. Nav., if a MORU qualifies as a ship or mobile craft, it can become the subject of a mortgage (“*ipoteca*”), in the only form of a voluntary mortgage (“*ipoteca volontaria*”): as per article 256 Cod. Nav., this security interest is made public by entry in the register. Maritime liens on ships are regulated by articles 552 et seq. Cod. Nav., which also provides for an order of priority. Maritime liens secure the claim for which they arise and are not entered or recorded in registers, but must be ascertained and declared in court, to be enforceable. The causes of the extinction of liens on ships are regulated in articles 558 and 559 Cod. Nav..

6. Is there any priority given to a registered creditor in such property in your jurisdiction? If so, please explain.

As reported, the order of recording of liens on ships is determined by the combined provisions of articles 552 and 556 Cod. Nav.. Pursuant to article 2748.2 Cod. Nav., unless otherwise provided, creditors assisted by liens prevail in enforcement over hypothecary creditors.

II.2 Treatment of Foreign MORUs as property.

7. Does your jurisdiction recognize ownership of any such property (i.e. any category of MORU) as evidenced by an entry in a public register of another jurisdiction?

Yes, insofar as general rules on recognition of foreign deeds and enforcement of titles that have been formed abroad, including bilateral or multilateral treaty law provisions whenever relevant, will apply and allow it as a matter of principle.

8. If:

- i. a MORU (or any type thereof) is categorized as a “vessel” or “ship” or other “marine equipment” or other special type of property in another jurisdiction and is registered and/or flagged as such in that jurisdiction, BUT
- ii. the MORU would not be considered a “vessel” or “ship” under the domestic laws of your jurisdiction,

would the courts or relevant authorities in your jurisdiction nonetheless treat the foreign-registered MORU as a “vessel” or “ship” for:

- a. purposes of arrest of the MORU?

For this group of questions, in general, there may be two alternative conditions under which a foreign MORU may be considered a “ship” in the Italian legal system.

- The first case is the one in which an international agreement has been ratified and has entered into force for Italy, which incorporates a sufficiently broad definition of “ship”, thus allowing also MORUs to be included in its scope (despite a stricter notion of “ship” under domestic law).
- A second condition may occur as article 136.3 Cod. Nav. provides that “[t]he provisions relating to ships also apply, insofar as not otherwise provided, to mobile craft used for any service relating to navigation or traffic in maritime or inland waters”. Therefore, there may be cases where the foreign MORU, despite not being considered a “ship” in the Italian legal system, is - in practice - subject to the same body of rules.

Moving to sub-point (a) in particular, Italy is a party to the International Convention on the Arrest of Ships, opened to signature in 1952 in Brussels, which does not provide a definition of “ship”. However, it is noted that under article 2 of the Convention “[a] ship flying the flag of one of the Contracting States may be arrested in the jurisdiction of any of the Contracting States in respect of any maritime claim”. Based on this, it can be inferred that, if a foreign MORU is considered a ship in its domestic jurisdiction, it will fly the flag of that State. Therefore, it is arguable that it would be considered included within the scope of application of the Convention.

In any case, the procedure envisaged for the arrest of ships under the Italian Code of Navigation can be expressly extended to crafts, pursuant to article 682.1.3 Cod. Nav.¹. This means that foreign MORUs could be treated as vessels under Italian legislation for the purposes of their arrest.

¹ According to which “[t]he authorization to proceed to [...] the arrest shall contain: [...] (3) particulars of the ship or float to which the authorization relates”.

b. purposes of foreclosure on a mortgage / hypothecation of the MORU?

Also in this case, Italy is a contracting party to an international law instrument, namely the International Convention for the Unification of Certain Rules of Law relating to Maritime Liens and Mortgages, opened to signature in 1926 in Brussels. According to article 1 of the Convention “[m]ortgages, hypothecations, and other similar charges upon vessels, duly effected in accordance with the law of the Contracting State to which the vessel belongs, and registered in a public register either at the port of the vessel’s registry or at a central office, shall be regarded as valid and respected in all the other contracting countries”. As long as other jurisdictions consider MORUs as “ships”, these may be included in the scope of application of the Convention. Provided that the correct procedure has been followed in the State in which the ship is registered, Italy would then arguably be compelled to recognize the mortgage. This is, however, without prejudice to the procedure of foreclosure, which is not governed by the Convention (but by Italian law).

If the State in which the vessel is registered is not a party to the Convention, Italian law would apply. However, noting the wording of article 136.3 Cod. Nav., it could be considered that the provisions of the Code of Navigation on maritime hypothec (articles 565 et seq.) do not expressly exclude crafts from their scope (despite only mentioning ships). Based on this, it could be inferred that maritime hypothec also applies, under the Italian legislation, also to crafts. Therefore, it could be maintained that foreign MORUs might be considered “ships” (or, *rectius*, crafts to which the same treatment as ships apply).

c. purposes of enforcement of maritime liens on the MORU?

Also in this case, the 1926 Brussels Convention may apply. The Convention does not contain provisions on the enforcement of liens but defines some claims that give rise to maritime liens (article 3). In those cases, provided that the MORU is registered in a State party as a vessel, the Convention may apply, and therefore for these purposes the MORU may be considered as a “ship”.

Towards non-State Parties, article 552 Cod. Nav. would apply, which only refers to “ships”. However, the same considerations as for sub-point (b) above can be made.

d. any or all other purposes?

It is difficult to think of other practical purposes.

In the alternative, would your courts in such cases decline to enforce an asserted claim or mortgage if the (foreign) MORU is not recognized as a vessel or ship in your jurisdiction?

See above.

9. Would your jurisdiction accord the same priority of lienors and recorded creditors of a foreign-registered MORU as such lienors and creditors would have in the jurisdiction where the MORU was originally recorded or registered?

The answer is probably a negative one: in case where an international convention applies, the priority to be followed would be the one provided for by the convention (which may differ from the one of the State where the MORU is recorded or registered). In other case, Italian law would most likely apply.

- a. If your jurisdiction is party to the International Convention for the Unification of Certain Rules of Law relating to Maritime Liens and Mortgages 1926 or the International Convention on Maritime Liens and Mortgages 1993, would your jurisdiction recognize a MORU as a “vessel” or “sea-going vessel” (respectively) for purposes of that Convention?

As seen above, the answer is probably in the affirmative.

10. What law would your jurisdiction apply to, or what law would it consider to govern, a sale or a change of ownership of a foreign-registered MORU which is operated in the EEZ of your jurisdiction? Foreign-owned but not registered, or operated in the territorial sea of your jurisdiction?

Italy does not have an EEZ yet (although, with Law No. 14 of 14 June 2021, Italy authorized its establishment). In addition, the EEZ has only a functional scope (as it relates only to the exploitation of economic resources and marine environmental protection), but it does not grant full jurisdiction to the coastal State. The question may therefore not be pertinent to the status of MORU when it comes to the law applicable to sales and changes of ownerships.

Would your answer vary (and if so, how would it vary) if the MORU was:

- a. Foreign-owned but not registered, or
b. operated in the territorial sea of your jurisdiction?

Same as above.

11. Are there any reported decisions in your jurisdiction which address the legal classification (as “ship”, “vessel” or other “marine equipment” or other special type of property) of:
a. MORUs (of any type);

None could be found.

b. Offshore wind turbines (fixed or floating);

None could be found.

c. Mobile Offshore Drilling Units (“MODUs”);

The Court of Appeals of Venice held on 25 February 2010 that a “jack up drill rig” had to be qualified as a “mobile craft”, adding that “mobile crafts can be devoid of own propellers and are subject to the same administrative legislation [of ships]” (courtesy translation).

d. FSUs and FPSOs

None could be found.

If so, please attach copies.

III. Questions related to arrest.

1. Would it be possible to arrest, seize, detain, or otherwise proceed *in rem* or otherwise against a MORU for a maritime claim in your jurisdiction (whether under domestic law or binding convention)?

The qualification of MORUs as ships is not a straightforward exercise under Italian law. But assuming such qualification, then yes, it would be possible in Italy to arrest a MORU for a maritime claim, and the following answers are hence given based on such assumption.

If on the contrary MORUs were to be held mere movables unsuitable to qualify as ships, the procedural rules set in the Italian Civil Procedural Code for conservative arrest of assets would apply.

(a) If so, on what grounds?

The arrest would be on the grounds that, pursuant to article 136 Cod. Nav., the MORU would be either a ship (“*nave*”) or a mobile craft (“*galleggiante mobile*”) to which the rules for ships would apply unless otherwise provided. Hence, Italy being a contracting state to the 1952 Arrest Convention, which contains no definition of “ship”, the Convention regime would apply to a MORU and it would therefore be possible to arrest a MORU for a maritime claim (as defined under article 1 thereof).

(b) Is the answer to this question determined by flag state law or the domestic maritime law of your jurisdiction?

The answer to the above question is determined by the 1952 Arrest Convention regime which Italian courts, through article 8 thereof, have applied to maritime claims

whether or not the ship flies the flag of a contracting state. Equally, arrest of a MORU is likely to be available in Italy regardless of the flag the MORU flies.

2. Is it possible to arrest, seize, detain, or otherwise proceed against a MORU for *non-maritime* claims in your jurisdiction?

In Italy it would be possible to arrest a MORU for a non-maritime claim only if the MORU flies the flag of a non-contracting state to the 1952 Arrest Convention (see article 8.2 of the 1952 Arrest Convention).

3. If a MORU were arrested, seized, detained, etc. in your jurisdiction, would it be possible to obtain a release of the MORU from such arrest/detention on posting of an adequate security?

Under Italian procedural law, the defendant is entitled to obtain an order of release of the MORU from the arrest if adequate security is given.

- (a) If so, please provide authority.

Article 684 of the Italian Civil Procedural Code.

IV. Questions related to limitations of liability.

1. Assuming that a MORU was not used for the purpose of exploring or exploiting the natural resources of the sea-bed or the subsoil thereof (cf. Art. 15(5) of Convention on Limitations of Liability for Maritime Claims, 1976), would the owner or salvor of a MORU benefit in your jurisdiction from the limitations of liability found in the Limitations of Liability for Maritime Claims, 1976 and/or its Protocols (“LLMC 1976/1996/2012?”)?

Italy is not a contracting state to the 1976 LLMC nor to its Protocols.

2. Assuming that a MORU is used to provide electrical power to *other* types of floating units or fixed or subsea facilities which were themselves exploring or exploiting the natural resources of the sea-bed or the subsoil thereof (cf. Art. 15(5) of LLMC), would the owner or salvor of that MORU benefit in your jurisdiction from the limitations of liability found in LLMC 1976/1996/2012?

Idem.

3. Would a MORU benefit from any other (non-LLMC based) forms of limitations of liability under the domestic law of your jurisdiction? If so, please explain with reference to authorities.

If the MORU qualifies as a ship (which is uncertain), limitation of liability would be available under Italian law assuming the MORU equals or does not exceed 300 tons of gross tonnage, and the only person entitled to benefitting from it would be the “*armatore*”, being the person in charge of the operation of the MORU.

Particularly, article 275 Cod. Nav. reads as follows: “*In relation to the obligations arisen in occasion of, and for the needs of, a voyage, and the obligations arisen from the facts and actions taken during that same voyage, except for those caused by gross negligence or wilful misconduct, the operator [armatore] of a ship of gross tonnage equalling or not exceeding 300 tons can limit its overall liability to a sum equivalent to the value of the ship, freight and any other proceeds of the voyage*”.

V. Questions related to innocent passage and transit.

UNCLOS article 60.1.b gives coastal States the exclusive right within their Exclusive Economic Zone (EEZ) to construct, authorize, and regulate the construction, operation, and use of “installations and structures” for the purposes specified in article 56. This includes the regulation of energy production from water, currents, and winds (article 56.1.a), exercising these rights while respecting the rights of other States. According to article 91, each State has the right to establish the conditions for the registration of “ships” under its flag.

According to the UNCLOS, installations and structures designed for energy production from water, currents, and wind are classified separately from ships. However, some Flag States, per UNCLOS article 91, may classify MORU) as “ships”, “vessels”, or “installations”.

If a MORU is not self-propelled, it will only be able to enter the waters of a coastal State while being towed, being considered a ship if the flag State has registered it as such. Its nationality may differ from the flag of the tug.

In Italian law, the towage contract is governed by the Italian Code of Navigation, specifically articles 101 and onward. This contract normally involves two or more ships. For the definition of ship, see article 136 Cod. Nav., and for a definition of port towage, refer to Regulation (EU) No. 2017/352, article 2.17. If the MORU is classified not as a ship but as registered movable property, it could be considered cargo being towed by a mother ship or as an extension of the mother ship.

1. Would a right of innocent passage be recognized in your jurisdiction for a foreign-registered MORU being towed through your jurisdiction’s internal waters (cf. UNCLOS Art. 8(2))?

Italy ratified the United Nations Convention on the Law of the Sea (UNCLOS) with Law No. 689 on December 2, 1994, also containing the relevant executive order. Currently, no domestic legislation in Italy defines the term “innocent passage.”

The present answer only deals with innocent passage in “extended” internal waters under article 8(2) UNCLOS and not with innocent passage in general.

Should a situation arise in Italy which is covered by article 8.2, and a foreign-registered MORU is recognized by the flag State as a ship, it is believed that it would have the right of innocent passage, provided that the mother ship also has that right. On the other hand, if a foreign-registered MORU is not classified as a ship, its right to innocent passage would depend on the status of the mother ship. In this case, the MORU could be considered cargo being towed by the mother ship or seen as an extension of the mother ship itself.

2. Would a right of innocent passage be recognized in your jurisdiction for a foreign-registered MORU being towed through your jurisdiction's territorial sea (cf. UNCLOS Art. 17, 24(1))?

If a foreign-registered MORU is recognized by the flag State as a ship, it is believed that it would have the right of innocent passage, provided that the mother ship also has that right. On the other hand, if a foreign-registered MORU is not classified as a ship, its right to innocent passage would depend on the status of the mother ship. In this case, the MORU could be considered cargo being towed by the mother ship or seen as an extension of the mother ship itself.

- a. Would your jurisdiction recognize its own criminal jurisdiction on board a foreign-registered MORU passing through your jurisdiction's territorial sea other than in accordance with UNCLOS Art. 27?

Italy has not implemented any specific measures under article 27.2 of UNCLOS. This means that if a foreign-registered MORU is classified as a ship by its flag State, and the crime committed on board does not fall under the cases specified in letters a) to d) of article 27.1 of UNCLOS, Italy will not exercise its criminal jurisdiction.

If a foreign-registered MORU is not recognized as a ship by the flag State, article 27 does not apply. However, if a foreign-registered MORU is considered an extension of the mother ship (tug) or as a sea-going cargo of the same mother ship (tug), the legal regime applicable to the mother ship could be extended to the MORU. In this case, Italy would not exercise its criminal jurisdiction, if the crime committed on board does not fall under the cases specified in letters a) to d) of article 27.1 of UNCLOS.

Italy may assert its criminal jurisdiction if the second interpretation is deemed invalid.

- b. Would your jurisdiction recognize its own civil jurisdiction on board a foreign-registered MORU passing through your jurisdiction's territorial sea other than in accordance with UNCLOS Art. 28?

Italy shall exercise its civil jurisdiction over a foreign-registered MORU passing through its territorial sea according to article 28, provided that the MORU is classified as a ship by its flag State.

If a foreign-registered MORU is not recognized as a ship, article 28 does not apply to it. However, if the foreign-registered MORU is considered an extension of the mother ship (tug) or as a sea-going cargo of the same mother ship (tug), the legal regime applicable to the mother ship may also extend to the MORU. In these situations, Italy

will exercise its civil jurisdiction according to UNCLOS Article 28.

When the UNCLOS does not restrict Italian civil jurisdiction, a MORU classified as a ship or a mother ship (tug) registered in the EU will fall under EU Regulation no. 1215/2015 provisions.

If the foreign-registered MORU does not fall under the aforementioned categories, then Italy's jurisdiction will be governed by the Italian Code of Civil Procedure.

3. If there are straits used for international navigation in the waters adjacent to your jurisdiction, would a right of transit passage (or innocent passage) be recognized in your jurisdiction for a foreign-registered MORU being towed through that strait (cf. UNCLOS Art. 38, 45)?

Yes.

4. If your jurisdiction is an archipelagic State (within the meaning of UNCLOS Art. 46), would a right of innocent passage be recognized in your jurisdiction for a foreign-registered MORU being towed through your jurisdiction's archipelagic waters (cf. UNCLOS Art. 52)?

Italy is not an archipelagic State.

VI. Question related to sovereign immunity and rights of owners or creditors to remove property from established MORU operations

1. In your jurisdiction, does the sovereign immunity prohibit by law the arrest, repossession or seizure by a creditor of property under lease or contract with an organ of the state (such as a public utility)?

Under Italian law, determining the applicability of this immunity can be complex: the case law is not uniform, and it often refers specifically to fixed infrastructure for energy production rather than mobile units, like the one in question. Property under lease or contract with an organ of the State may be immune from repossession if the property serves a public utility. This condition could be met if the electricity produced is supplied to the national electricity grid. The relevant legal framework is outlined in Article 1, paragraph 4 of Law No. 10 of January 9, 1991, and Legislative Decree No. 190 of November 25, 2024, which governs the administrative regulations to produce energy from renewable sources.

2. In your jurisdiction, may the sovereign/state waive immunity by contract for the benefit of creditors or lienors seeking to recover leased property (e.g. a leased MORU) or damages in the event of a default by the sovereign or another responsible party under a contract or lease to produce or supply energy to a sovereign- or state- owned entity?

In theory, Italy can waive its sovereign rights and immunity.