



Italian Maritime Cabotage

Paragraph 1 of art. 224 of the Italian Code of Navigation (“ICN”) provides that the cabotage trading between Italian ports is reserved, “*within the terms of the Council Regulation (EEC) No. 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage)*” (“the Cabotage Regulation”), to “*Community shipowners*”, who employ vessels which:

- (i) are registered in a Member State whose flag they fly; and
- (ii) comply with the requirements of that Member State in relation to cabotage.

Thus, pursuant to the definition of “maritime cabotage” provided for by art. 2 of the Cabotage Regulation, Italian maritime cabotage includes “*services normally provided for remuneration*” as follows:

(a) mainland cabotage: the carriage of passengers or goods by sea between Italian ports situated on the mainland (without calls at islands);

(b) off-shore supply services: the carriage of passengers or goods by sea between any Italian port and installations or structures situated on the Italian continental shelf;

(c) island cabotage: the carriage of passengers or goods by sea between (i) Italian ports situated on the mainland and on one or more of the Italian islands or (ii) ports situated on the Italian islands.

It is worth noting that the above definition is not exhaustive and that the Court of Justice of the European Union has already been called by the Courts of Member States to help in construing the above provision.

Pursuant to art. 2.2 of the Cabotage Regulation “*Community shipowners*” are:

“(a) *nationals of a Member State established in a Member State in accordance with the legislation of that Member State and pursuing shipping activities;*

“(b) *shipping companies established in accordance with the legislation of a Member State and whose principal place of business is situated, and effective control*

exercised, in a Member State; or

(c) nationals of a Member State established outside the Community or shipping companies established outside the Community and controlled by nationals of a Member State, if their ships are registered in and fly the flag of a Member State in accordance with its legislation”.

In addition, according to the EU Commission, it is specifically required that the “effective control” of the ships operating cabotage services is exercised “*within the Union*” (Section 2.2 of the “Communication from the Commission on the interpretation of Council Regulation (EEC) No. 3577/92 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage)” dated 22.4.2014 (COM(14) 232 final).

It is for each Member State to verify compliance with the above “effective control” principle and more generally with the conditions set out under art. 2.2. To this end the Italian Ministry of Infrastructures and Transportation (now Ministry of Sustainable Infrastructures and Mobility) issued a Circular letter (no. 18931 of 13.7.2018) providing that, for the purpose of checking the implementation of the said principle, a declaration is issued by the Master and submitted to the Port Authority by the ship agent upon arrival at the loading port. In brief, quite apart from the indication of the concerned cabotage voyage, the following data have to be declared: name and nationality of the Master, name

and address of the “Registered Owner”, name and registered office of the “Shipping Company”, identification number and name of the ISM Company, name and address of the “Commercial Management” of the ship, name and address of the “Technical Management” and name of the Charterer.

As far as the Italian flagged vessels are concerned, Italian cabotage trading may be performed by vessels registered in the ordinary Ships’ Registry ruled by the ICN (arts. 143 and ff. ICN).

Vessels registered in the Italian International Registry (“IIR”), established and governed, by Law Decree No. 457 of 30.12.1997 (approved with amendments by Law No. 30 of 27.2.1998), as subsequently amended, cannot perform the cabotage voyages reserved under art. 224 ICN (art. 1, paragraph 5, of Law No. 30/1998), but for the following exceptions:

- cargo vessels of more than 650 tons GT are allowed to perform one cabotage voyage per month provided that (i) the cabotage voyage is the commencement or the prosecution of an international voyage and that (ii) the crew requirements under art. 1, paragraph 1 letters b) and c), are satisfied (i.e. at least six crew members of Italian or EU nationality or more if so indicated by collective agreements);
- cargo vessels of more than 650 tons GT are allowed to perform six cabotage voyages per month or unlimited cabotage voyages, each voyage being longer than 100 nautical miles, provided that the

crew requirements provided for by art. 2, paragraph 1, letter a), and paragraph 1-bis, are met (i.e. crew members must be all EU or within the derogations agreed, for each vessel, between the shipowner and the trade unions).

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