



ON THE WAVE – SUMMER 2014

Regulation (EC) No. 392/2009: summer holidays Under Italian law

Iran: extension of the limited sanction relief until 24 November 2014

Piracy: employment of PCASPs – exemption from training courses expired on 30 June 2014

23 July 2014 – Genoa (Italy)

REGULATION (EC) No. 392/2009: SUMMER HOLIDAYS.....UNDER ITALIAN LAW

The summer season is definitely opened. So, we have taken the liberty to exam the conditions of carriage used by the main Italian sea carriers operating in the domestic carriage, considering the entry into force of the Regulation (EC) No 392/2009 and the postponement of its application sought by Italian Government.

The findings of our exam show a rather confused outline.

Not many people know that so far the Regulation EC No. 392/2009 does not apply to the domestic carriage. Italy complied with Article 11 of the Regulation, deferring the application of same to the domestic carriage to 31.12.2016 for the ships of Class A and to 31.12.2008 for the ships of Class B under Directive 98/18/EC.

Consequently, the contract of domestic carriage by sea of passengers, luggage and vehicles is currently ruled by the Italian Code of Navigation, save for the application of Regulation (EC) No. 1177/2010 concerning the rights of passengers in the event of cancelled, interrupted and delayed departures as well as assistance provided to disabled persons or persons with reduced mobility.

What are the consequences? Manifold effects.

First of all, the limitation of liability of the sea carrier for death or personal injury and for loss or damages to luggage and vehicles as provided for by the Regulation (EC) No. 392/2009 does **not** apply.

In the event of death or personal injury suffered by passengers, general principles concerning non-patrimonial damages apply, in particular the personalization of the damages based on criteria of *Tabelle di Milano*, whose updated version has been issued just few days ago.

As far as loss or damages to luggage, Article 412 of Italian Code of Navigation applies, limiting any liability to EUR 6.19 per kilo or higher value declared by the passenger, in the event the luggage has been previously handed over to the sea carrier. Regarding undelivered luggage, the burden of proof of the liability of the sea carrier for loss or damages lies on the passenger.

As regards loss or damages to vehicles, the liability of the sea carrier is limited to EUR 103.29 per unit. Our Courts are used to multiply such a value for the liner meters of the vehicle, save that loss or damages are caused by fraudulent intention or gross negligence of the sea carrier or his employees or attendants. In this case no limitation applies.

Anyway, the even more important issue to be outlined is that the rights of passengers under the contract of carriage by sea are subject to the **six month time bar period** pursuant to Article 418 of Italian Code of Navigation – and Article 438 of the same Code for vehicles – **instead of two years as provided for by Regulation No. 392/2009**.

Please note hereunder the memo issued by the Ministry of Transport on 8th August 2013 by which the Authority refers to the postponement of application of the Regulation as applied by Italy.



Ministero delle Infrastrutture e dei Trasporti
Dipartimento per i trasporti, la navigazione ed i
sistemi informativi e statistici

**Direzione generale per il trasporto
marittimo e per vie d'acqua interne**

Divisione 2

Prot. n. 13977
Class. 019.04.03

Roma, 08 -08 -2013

A tutte le Direzioni Marittime

LORO SEDI

A tutte le Capitanerie di porto

LORO SEDI

Al Comando Generale delle Capitanerie di porto

Alla Direzione Generale dei Porti

SEDE

-Alla Confitarma

-Alla CONSAP

-Alla Fedarlinea

-All'Assoporti

-All'Assiterminal

LORO SEDI

OGGETTO: Circolare relativa alla attuazione del Regolamento del Parlamento europeo e del Consiglio n.392/2009 del 23 aprile 2009 concernente la responsabilità dei vettori che trasportano passeggeri via mare in caso di incidente e che applica tra i Paesi membri alcune disposizioni della Convenzione di Atene del 1974 relativa al trasporto via mare di passeggeri e del loro bagaglio, quale modificata dal Protocollo di Londra del 1 novembre 2002.

Nella Gazzetta Ufficiale dell'Unione europea n. L 131 del 28 maggio 2009 è stato pubblicato il testo del Regolamento in oggetto (all.1), con il quale sono state dettate le norme per regolare in modo uniforme, tra i Paesi Membri dell'Unione europea, la responsabilità dei vettori marittimi che trasportano passeggeri con bagagli al seguito.

Il Regolamento è entrato in vigore dal 1 gennaio 2013 con le modalità in appresso specificate, emanate al fine di assicurarne la puntuale e corretta attuazione, in particolare per quanto riguarda le unità adibite alla navigazione in cabotaggio nazionale, oggetto delle seguenti disposizioni transitorie.

- 1) L'applicazione del Regolamento 392/2009 è differita, in relazione al disposto di cui all'art. 11 del medesimo Regolamento:
- a) al 31 dicembre 2016, per le navi, adibite alla navigazione in cabotaggio nazionale, appartenenti alla classe A di cui all'art. 3 comma 1, del Decreto Legislativo 4 febbraio 2000, n. 45 recante "Attuazione della Direttiva 98/18/CE relativa alle disposizioni e



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*alle norme di sicurezza per le navi da passeggeri adibite a viaggi nazionali" che
recepisce l'art. 4 della citata Direttiva ;*

- b) al 31 dicembre 2018, per le navi , adibite alla navigazione in cabotaggio nazionale, appartenenti alla classe B di cui all'art. 3 comma 1, del Decreto Legislativo 4 febbraio 2000, n. 45 recante " *Attuazione della Direttiva 98/18/CE relativa alle disposizioni e alle norme di sicurezza per le navi da passeggeri adibite a viaggi nazionali" che recepisce l'art. 4 della citata Direttiva*
- 2) Ai sensi dell'art.1 comma 3 del citato Regolamento , sono attualmente escluse dal campo di applicazione del Regolamento 392/2009 le navi appartenenti alle classi C e D di cui all'art. 3 comma 1, del Decreto Legislativo 4 febbraio 2000, n. 45 recante " *Attuazione della Direttiva 98/18/CE relativa alle disposizioni e alle norme di sicurezza per le navi da passeggeri adibite a viaggi nazionali" .*

Il Direttore Generale
Dott. Enrico Maria Pujia

Considering the European Community, please note hereunder the spreadsheet arranged by the European Commission concerning the application of the Regulation No. 392/2009 to the domestic carriage of each Member State.



Application of Regulation (EC) No 392/2009 to domestic carriage on board ships of classes A, B, C and D as of 31/12/2012

Member State	Class A	Class B	Classes C and D
Coastal	<i>Entry into force</i>	<i>Entry into force</i>	<i>Announced application</i>
Belgium	31/12/2012	31/12/2012	
Bulgaria	31/12/2012	31/12/2012	
Croatia	31/12/2016	31/12/2018	
Cyprus	31/12/2016	31/12/2018	
Denmark	31/12/2012	31/12/2012	15/01/2013 (with some exceptions)
Estonia	31/12/2016	31/12/2018	
Finland	31/12/2012	31/12/2012	
France	31/12/2012	31/12/2012	
Germany	31/12/2016	31/12/2018	
Greece	31/12/2016	31/12/2018	
Ireland	31/12/2012	31/12/2018	
Italy	31/12/2016	31/12/2018	
Latvia	31/12/2016	31/12/2018	
Lithuania	31/12/2012	31/12/2012	
Malta*	N/A = not applicable	N/A = not applicable	
Netherlands	31/12/2012	31/12/2012	31/12/2012
Poland	31/12/2012	31/12/2012	
Portugal	31/12/2016	31/12/2018	
Romania	31/12/2012	31/12/2012	
Slovenia	31/12/2012	31/12/2012	
Spain	31/12/2014	31/12/2018	
Sweden	31/12/2012	31/12/2012	
UK	31/12/2016	31/12/2018	

Austria	31/12/2012	31/12/2012	
Czech Republic	31/12/2012	31/12/2012	
Hungary	31/12/2012	31/12/2012	
Luxembourg	31/12/2012	31/12/2012	
Slovakia	31/12/2012	31/12/2012	
Total*	28	28	28

Source: Based on information provided to the Commission by Member States, updated on 16 September 2013.

IRAN: EXTENSION OF THE LIMITED SANCTION RELIEF UNTIL 24.11.2014

Just on Monday, 21 July 2014 it has been reported that the Joint Plan of Action (JPOA) reached between Iran and E3+3 (UK, US, Russia, China, France and Germany) in November 2013 and expiring on 20th July 2014 has been extended for a further four months until **24th November 2014**.

This means that the limited EU sanctions relief under the Joint Plan of Action will remain in place until 24 November 2014. No additional sanctions have been suspended. All other EU sanctions and restrictions remain in place and in force.

PIRACY: EMPLOYMENT OF PCASPs – EXEMPTION FROM COURSES EXPIRED ON 30TH JUNE 2014

Under Article 5, paragraph 5, of decree no. 207/2011 it is allowed to deploy armed contractors on board Italian flagged ships even in absence of specific training courses to be arranged by Ministry of Interior, on condition that privately contracted armed security personnel (PCASP) belonging to armed task forces had been employed into international missions for a period of six month at least. Such a condition has to be certified by Ministry of Defense.

The exemption expired on 30th June 2014.

On 18th June last Mr. Emanuele Grimaldi, President of CONFITARMA, released an interview at the end of the private annual meeting of the Italian Shipowners Association in which he stressed the need to extend the above exemption, particularly in a period like this where the piracy risk in South-East Asia area seems to revive.

After a screening of the recent Official Gazette issues the above exemption seems not to extended yet. Same findings come from a research on *Normattiva*, the internet system concerning the status of Italian law in force.

Lacking the above extension, since 1st July 2014 the Italian flagged ships cannot be allowed to deploy PCASPs in HRA. For the time being, Shipowners will have to request the availability of NMP teams of Italian Navy only. Meanwhile Italian Navy is expected on 6th August 2014 to take charge for the third time since 2008 of the task force of the *Atlanta* operation against piracy in HRA.

Whilst every care has been taken to ensure the accuracy of this information at the time of publication, the information is intended as guidance only. It should not be considered as legal advice. For any further information, please contact Studio Legale Garbarino Vergani at the following contacts as reported hereunder.

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