

THE CLASSIFICATION OF PLEASURE CRAFT IN THE ITALIAN LEGAL SYSTEM: JUST A MATTER OF DEFINITION OR SOMETHING MORE?¹

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The need to regulate the phenomenon of nautical tourism, strongly felt at least in the Mediterranean area, has led the Italian legislator to provide a special framework for pleasure craft different from the general discipline of the Italian Navigation Code.

The provisions contained in the Italian Sailing Code (the so called "Codice della Nautica da Diporto") offer a legal classification of craft destined to pleasure navigation (distinguishing, depending on the length, between "unità da diporto", "nave da diporto", "imbarcazione da diporto", "natante da diporto"), thereby specifying the scope of the definition of "ship" laid down in Article 136 of the Italian Navigation Code.

The latter, indeed, in its first paragraph, after including any construction destined to carriage on water, also for towage or fishing purposes, refers to craft intended for pleasure sailing or other purposes as well.

Moreover, the adoption of EU directives, aimed at harmonizing the laws, regulations and administrative provisions of the Member States and the characteristics of pleasure craft, has extended the definition of "watercraft" to new categories and purposes. Therefore, the regulatory framework, already repeatedly revised, is still evolving.

The article will focus on the analysis of the current Italian and European regulatory framework, on the existing discrimen between merchant vessels and pleasure craft and on the identification of the consequences related to this distinction,

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with particular regard to the relevant requirements and limits laid down for the category of pleasure craft.

Keywords: vessel; pleasure craft; ship; Italian Pleasure Sailing Code.

1. INTRODUCTION: THE SPECIALTY OF THE ITALIAN PLEASURE SAILING CODE

Until issuing of the Legislative Decree no. 171 of 18 July 2005 “*Codice della nautica da diporto e di attuazione della direttiva 2003/44/CE a norma dell’articolo 6 della legge 8 luglio 2003, n. 172*”² – (“Italian Pleasure Sailing Code and the implementation of Directive 2003/44/EC under Article 6 of Law no. 172 of 8 July 2003”) and the related Ministerial Decree no. 146 of 29 July 2008 “*Regolamento di attuazione dell’articolo 65 del decreto legislativo 18 luglio 2005, n. 171 recante il codice della nautica da diporto*”³ – (“Implementing Regulation of Article 65 of the Legislative Decree no. 171 of 18 July 2005”⁴), the matter relating to sailing was governed by the Italian Navigation Code of 1942⁵ and by Law no. 50 of 11 February 1971.

The Title VIII, Part I, Book I of the Italian Navigation Code is entitled “Special provisions” and Articles from 213 to 218⁶ contained the rules on pleasure navigation. The Code classified and defined only some technical aspects and procedures relating to the command and conduct of “*sailing pleasure ships of gross tonnage not in excess of fifty tons*”, “*pleasure motor-ships of gross tonnage not in excess of twenty five tons*” and the guide of “*car-boats*”⁷, without giving a general definition.

However, the non-profit nature was implicitly included in these Articles. For example, Article 216, entitled “*Cabin and family personnel*”, stated: “*On the pleasure ships of gross tonnage not superior to fifty tons if with sail, and to twenty five if with motor, person can be embarked, as cabin and family personnel, not belonging to the sea faring people or to the navigating personnel of the inland navigation, provided that they are already at Ship-owner’s service*”⁸.

² Published in G.U. no. 202 of 31 August 2005.

³ Published in G.U. no. 222 of 22 September 2008.

⁴ For the analysis, see: M.M. Comenale Pinto, *Il regolamento per l’attuazione del codice del diporto*, in *Dir. mar.*, 2009, p. 611.

⁵ Royal Decree, 30 March 1942, no. 327.

⁶ Articles 213 to 216, Article 218 and Article 1212 (“*Non performance of provisions on the pleasure navigation*”) were repealed by Article 66 of the Legislative Decree no. 171 of 18 July 2005.

⁷ P. Manca, *The Italian Code of Navigation – Translation and Commentary*, Milano, 1958, pp. 76-77.

⁸ P. Manca, *op. cit.*, p. 77.

Of course, these provisions did not regulate completely all the legal aspects for which reference was made to the general discipline of the commercial navigation contained in the Italian Navigation Code.

Despite the evolution of the phenomenon of nautical tourism, the first comprehensive regulation was achieved by Law no. 50 of 11 February 1971 and its subsequent amendments – Law no. 51 of 6 March 1976, Law no. 193 of 26 April 1986, Legislative Decree no. 378 of 16 June 1994 and Law no. 172 of 8 July 2003⁹.

The original text of Article 1, paragraph 3, of Law no. 50 of 11 February 1971 referred to the Navigation Code, laying down that: *“per tutto ciò che non sia espressamente previsto dalla presente legge, si applicano le disposizioni contenute nel codice della navigazione, nei relativi regolamenti di esecuzione e nelle altre leggi speciali”* (“for all that is not expressly provided by this Law, the provisions contained in the Navigation Code, the relevant implementing regulations and other special laws apply”)¹⁰.

Law no. 50/1971 has been repealed by the Legislative Decree no. 171 of 18 July 2005 – the Italian Pleasure Sailing Code – but the latter continues to underline the specialty of the legal framework concerning the pleasure navigation and, in Article 1, paragraph 3, it clarifies the hierarchy of legislation: *“Per quanto non previsto dal presente codice, in materia di navigazione da diporto si applicano le leggi, i regolamenti e gli usi di riferimento ovvero, in mancanza, le disposizioni del codice della navigazione, approvato con regio decreto 30 marzo 1942, n. 327, e le relative norme attuative. Ai fini dell’applicazione delle norme del codice della navigazione, le imbarcazioni da diporto sono equiparate alle navi ed ai galleggianti di stazza lorda non superiore alle dieci tonnellate, se a propulsione meccanica, ed alle venticinque tonnellate, in ogni altro caso, anche se l’imbarcazione supera detta stazza, fino al limite di ventiquattro metri.”* (“For matters not regulated by this Code, in the field of Pleasure navigation shall apply the relevant laws, regulations and uses or, in the lacking thereof, the provisions contained in the Navigation Code, adopted by the Royal Decree no. 327 of 30 March 1942, and the related implementing rules. For the purposes of applying the provisions of the Navigation Code, pleasure craft shall be treated as ships and as barges that do not exceed 10 tons of gross tonnage, if mechanically propelled, and not exceeding 25 tons of gross tonnage, in all other cases, even if the craft exceeds this tonnage, up to twenty-four meters limit”).

⁹ See, for example, R. Abbate, *Alcune osservazioni sulla legge 8 luglio 2003, n. 172 “Disposizioni per il riordino ed il rilancio della nautica da diporto e del turismo nautico”*, in *Il Diritto Marittimo*, 2004, pp. 1130-1133.

¹⁰ This paragraph was repealed by Law no. 172 of 8 July 2003.

Confirming the prevalence of the regulatory framework provided in this Code and of all the laws, regulations and even uses over the general rules laid down in the Italian Navigation Code, it seems preferable to support the theory of “specialty” of these rules, conversely to a part of the Doctrine which links the matter of pleasure navigation with the concept of “autonomy”¹¹. *Vice versa*, there is the need to underline the close link between the two Codes in order to understand the characteristics of the “speciality” of the Italian Pleasure Sailing Code.

2. THE PURPOSES OF USE OF PLEASURE CRAFT

The regulatory framework provided in the Legislative Decree no. 171 of 18 July 2005 drafts the central concepts of the matter and mentions and regulates explicitly both the non – profit and the commercial use of pleasure craft¹².

The scope of the Italian Pleasure Sailing Code is laid down in Article 1, paragraph 1: “*Le disposizioni del presente codice si applicano alla navigazione da diporto, anche se esercitata per fini commerciali mediante le unità da diporto di cui all’articolo 3 del presente codice, ivi comprese le navi di cui all’articolo 3 della legge 8 luglio 2003, n. 172*” (“The provisions of this Code apply to the pleasure navigation, even if carried out for commercial purposes by means of pleasure craft listed in Article 3 of this Code, including ships listed in Article 3 of Law no. 172 of 8 July 2003”), while the definition of “pleasure navigation” is laid down in paragraph 2: “*Ai fini del presente codice si intende per navigazione da diporto quella effettuata in acque marittime ed interne a scopi sportivi o ricreativi e senza fine di lucro, nonché quella esercitata a scopi commerciali, anche mediante le navi di cui all’articolo 3 della legge 8 luglio 2003, n. 172, ferma restando la disciplina ivi prevista*” (“For the purposes of this Code, pleasure navigation means the navigation in maritime and inland waters

¹¹ For a definition of specialty, see: A. Lefebvre D’Ovidio, G. Pescatore, L. Tullio, *Manuale di diritto della navigazione*, ed. XIIIV, Milano, 2016, p. 5. For a deeper analysis, on the theory of “specialty” see, *inter alia*: A. Antonini, *Riflessioni sulla navigazione da diporto*, in *Il Diritto Marittimo*, 2005, p. 663; A. Antonini, *L’autonomia del diritto della navigazione, il ruolo del diritto comune e la posizione sistematica della legislazione sulla navigazione da diporto*, in U. La Torre, A.L.M. Sia (edited by), *Diporto e turismo tra autonomia e specialità. Un’occasione per un incontro interdisciplinare*, Roma, 2014, pp. 15–63; A. Xerri, *Il codice della nautica da diporto tra diritto speciale e diritto comune*, in M.M. Comenale Pinto, E.G. Rosafio (edited by), *Il diporto come fenomeno diffuso. Problemi e prospettive del diritto della navigazione*, Roma, 2015, pp. 1–18; A. Antonini, *La legislazione sulla navigazione da diporto nel sistema del diritto della navigazione*, in M.M. Comenale Pinto, E.G. Rosafio (edited by), *Il diporto come fenomeno diffuso. Problemi e prospettive del diritto della navigazione*, Roma, 2015, pp. 19–45. On the theory of “autonomy” see: M. Grimaldi, *La nautica da diporto. La disciplina legale*, Napoli, 2011, p. 8.

¹² See: A. Masutti, *Il nuovo codice della nautica da diporto*, in *Dir. mar.*, 2006, p. 736.

for sport or leisure purposes without profit, as well as for commercial purposes, also by means of ships listed in Article 3 of Law no. 172 of 8 July 2003, without prejudice of the rules set out therein”).

At first reading, the presence of the two elements is clear, one objective and one teleological:

- the type of craft;
- the purpose of use (non-profit and commercial purposes).

Actually, the commercial purpose of pleasure craft was not contemplated in the original text of Law 50/1971 whose Article 1 defined the Pleasure Navigation as *“quella effettuata a scopi sportivi o ricreativi dai quali esuli il fine di lucro”* (“that carried out for sport or leisure purposes without financial gain”).

Only after several amendments, Law 172/2003 provided the possibility of using all pleasure craft *“mediante contratti di locazione e di noleggio e per l’insegnamento della navigazione da diporto, nonché come unità di appoggio per le immersioni subacquee a scopo sportivo o ricreativo”* (“by lease and charter contracts and for training for pleasure navigation, and as support units for scuba diving for sports or pleasure purposes).

A definitive specification is laid down in Article 2 of the Legislative Decree no. 171/2005, according to which the operation of the pleasure craft is carried out for commercial purposes when:

- the craft is under a lease or hire contract;
- is used for the professional training for pleasure navigation;
- is used by diving and underwater training centres as support unit.

However, allowing the commercial use of pleasure craft and its limits¹³, the Legislative Decree no. 171/2005 explicitly marks the distinction between pure commercial and pleasure navigation: this difference is essentially based on the type of the craft used and on the purpose of the end-user.

¹³ Even if the Code allows the use of pleasure craft for financial gain by natural or legal persons, the end-user must be a natural person who uses the pleasure craft only for sport and leisure purposes. On the topic, see: M. Grigoli, *In merito alla locazione ed al noleggio delle imbarcazioni ed al noleggio delle imbarcazioni e dei natanti da diporto*, in Giust. civ., 1990, p. 75; A. Antonini, *Rilievi critici sulla nuova disciplina della nautica da diporto*, in Dir. mar., 1991, p. 181-183; L. Tullio, *Contratto di noleggio*, in Trattato di Diritto civile e commerciale, vol. LV, Milano, 2006; M. Deiana, *Il noleggio delle unità da diporto*, in Dir. mar., 2007, p. 115; L. Tullio, *Il noleggio nel codice della nautica da diporto*, in M.M. Comenale Pinto, E.G. Rosafio (edited by), *Il diporto come fenomeno diffuso*, Roma, 2015, p. 501.

3. THE NOTION OF “SHIP” AND THE LEGAL CLASSIFICATION OF PLEASURE CRAFT

In order to focus on the notion of “pleasure craft”, their legal classification and the related legal regime, it is necessary to provide some relevant definitions stated in the Italian Navigation Code strictly connected with it. Article 136 (entitled “*Navi e galleggianti*” – “Ships and barges”), first paragraph of the Italian Navigation Code gives a definition of “ship”¹⁴ as: “*Per nave s’intende qualsiasi costruzione destinata al trasporto per acqua, anche allo scopo di rimorchio, di pesca, di diporto, o ad altro scopo*” (“By ship it is meant any construction destined to the carriage on water, also for the purpose of towage, fishing, pleasure sailing, or other purpose”).

This broad definition provides a concept of “ship” as a “construction” characterized by its suitability to float and move on the sea/water for any purpose.

The term “construction” has been defined as “*aggregazione strutturale di elementi materiali unitari, che realizza un complesso contrassegnato da determinate caratteristiche teoriche e funzionali*”¹⁵ (“Structural combination of uniform and physical elements which realizes a complex characterized by theoretical and functional characteristics”). In this sense, the definition stated in Article 136 is based on two elements: one functional and one teleological. On the one hand, the ship must be “capable of navigation”¹⁶, on the other hand, “destined to the carriage on water” for any purpose. Therefore, for the scope of this Article, the shape, the length and the dimensions are irrelevant.

In particular, the Code focused on the teleological element and, even in its preparatory work¹⁷, the ship was described as “*il mezzo acqueo atto al trasporto,*

¹⁴ On the topic, see: D. Gaeta, *Nave (diritto della navigazione)*, in *Enciclopedia del Diritto*, 1977, p. 602 according to whom the term “ship” means “*l’ordinata aggregazione di materiali vari connessi in guisa da dar luogo alla creazione di un corpo dotato di particolari caratteristiche*” (“the smooth combination of various materials able to create a body with particular characteristics”); M. Carretta, *La nave*, in A. Antonini (edited by), *Trattato breve di diritto marittimo*, I, Milano, 2007, p. 299 ff.; M. Musi, *A study on the Floating Units Operating in the Oil and Gas Offshore Fields: the Need for a Juridical Placement and the Quest for the Applicable Discipline*, in M. Musi (edited by), *The Ship: an Example of Legal Pluri-Qualification*, Bologna, 2016, pp. 95-130.

¹⁵ G. Pescatore, *Nave*, I) *Diritto della Navigazione*, in *Enc. Giur.*, XX, 1990, p. 1 ff.

¹⁶ M. Musi, *The concept of “ship”: an Italian perspective*, in *The Journal of International Maritime Law*, Issue 5 Volume 21, 2015, p. 423; M. Musi, *Floting Storage Units (FSUs) e Floating Production Storage and Offloading Units (FPSOs): una proposta di qualificazione giuridica*, in *Dir. mar.*, 2016, p. 234.

¹⁷ On the preparatory work of the Italian Navigation Code, see: A. Scialoja, *Sugli art. 38 e 39 del progetto di codice marittimo*, in *Riv. dir. nav.*, 1931, I, p. 216; A. Scialoja, *La definizione di nave nel progetto del Codice Marittimo*, in *Riv. dir. nav.*, 1935, I, p. 248; A. Scialoja, *Navi e galleggianti*, in *Studi per la codificazione*, supplement to *Riv. dir. nav.*, Roma, 1940, I, p. 11.

cioè a spostare sull'acqua persone o merci a prescindere dalla mole, dal tonnellaggio, dall'attitudine alla navigazione d'alto mare o meno e dalla dotazione di un apparato di autolocomozione" ("a craft suitable for the transportation by water, that is, suitable for moving people or goods on the water regardless to the quantity, tonnage, attitude to navigate in high seas and the existence of self-propulsion")¹⁸. According to the wording, the displacement can take place also by a force external to the vessel. The Report n. 89 on the Italian Navigation Code qualifies the concept of "navigation" as "autarkic transport" and clarifies, indeed, that the transport "va inteso non nel significato ristretto di trasferimento di persone o di cose da un luogo ad un altro, bensì in un significato più ampio, qual è usato dalla dottrina, di spostamento in un determinato spazio di un qualsiasi corpo per qualsiasi fine" ("Shall be understood not in the limited meaning of transport of people and goods from one place to another, but in the broader meaning, as used by the doctrine, of displacement in a given space of whatever body for any purpose")¹⁹.

Similarly, also the second paragraph of Article 136 provides (only) a distinction between major and minor ships and the third paragraph states that the provisions relating to the ships apply to barges as well:

"Le navi si distinguono in maggiori e minori. Sono maggiori le navi alturiere; sono minori le navi costiere, quelle del servizio marittimo dei porti e le navi addette alla navigazione interna.

Le disposizioni riguardanti le navi si applicano, in quanto non sia diversamente disposto, anche ai galleggianti mobili adibiti a qualsiasi servizio attinente alla navigazione o al traffico in acque marittime o interne".

("Ships are distinguished as major and minor. Major ships are intended to sail on the high seas; minor ships are intended for coastwise sailing – those for port maritime services and inland navigation.

The rules relating to ships apply, unless otherwise provided, also to barges intended for any kind of service relating to navigation or traffic in maritime or inland waters").

In light of the above considerations, of the general nature and the breadth of the Italian definition of "ship", the Legislative Decree no. 171 of 18 July 2005 (*Codice della nautica da diporto*) gives a different and more specific classification

¹⁸ The so-called "theory of navigation" was formed on the basis of D. 14.1.1.6 (Ulpianus. 28 ad ed.): "Navem accipere debemus sive marinam sive fluviatilem sive in aliquo stagno naviget sive schedia sit.". See: M. Chirco, F. Ballini, *Ancora sul concetto giuridico di nave*, in *Dir. mar.*, 2007, p. 1272.

¹⁹ A. Scialoja, *Sistema del diritto della navigazione*, Roma, 1933; D. Gaeta, *Formazione e carattere del codice della navigazione*, in *Riv. dir. nav.*, 1951, I, p. 224.

of craft destined to pleasure purposes that allows the application of its special rules to the pleasure craft.

Article 3 of the Legislative Decree no. 171/2005 offers a legal classification of craft destined to pleasure navigation, defining:

- a. *“unità da diporto”* (pleasure craft) as any construction of any type and with any means of propulsion intended for pleasure navigation;
- b. *“nave da diporto”* (pleasure ship) as any pleasure craft of hull length more than 24 meters, measured according to the harmonized standards EN/ISO/DIS 8666 for the measurement of *“natanti”* and *“imbarcazioni da diporto”*;
- c. *“imbarcazioni da diporto”* (pleasure boat) as any pleasure craft of hull length more than 10 meters and up to 24 meters, measured according to the harmonized standards referred to in point b);
- d. *“natante da diporto”* (small pleasure boat) as any rowing craft, or pleasure craft of hull length equal to or less than 10 meters, measured according to the harmonized standards referred to in point b).

According to Article 15 of the Legislative Decree no. 171/2005, both *“navi da diporto”* and *“imbarcazioni da diporto”* are subject to registration requirement: *“navi da diporto”* shall be entered in registers kept by the Maritime Authorities (*Capitanerie di porto*), *“imbarcazioni da diporto”* shall be entered both in registers kept by the Maritime Authorities and in registers kept by maritime district offices (*uffici circondariali marittimi*), provincial offices of the Department of land transport and information and statistical systems (*uffici provinciali dal dipartimento dei trasporti terrestri e per i sistemi informativi e statistici*) authorized by the Ministry of Infrastructures and Transport. For the registration of *“navi da diporto”*, the owner submits the ownership title or the extract from the register of ships under construction and the Tonnage Certificate, together with the certificate of deregistration from the foreign register in case of foreign pleasure ship. For the registration in the Italian registers of *“navi da diporto”* entered in a public register of an EU member State, the submission of the certificate of deregistration from the EU register with the identification of the owner and of the craft, instead of the ownership title, is enough (Article 3 of the Ministerial Decree no. 146 of 29 July 2008).

In order to obtain the registration of *“imbarcazione da diporto”*, Article 19, paragraph 1 of the Legislative Decree 171/2005 requires that the owner submits to the

competent authority the ownership title, the EU declaration of conformity²⁰ released by the manufacturer or his agent established in the EU territory, together with the EU attestation of type, when due, and the declaration of the engine power or inboard engines installed. In addition, if it is a pleasure boat flying the flag of an EU member State, with Ce marking, the submission of the certificate of deregistration from the EU Register is necessary and, if the latter one contains all technical data, it may replace the required technical documents requested in the paragraph 1. For “*imbarcazioni da diporto*” without Ce marking, a certificate of suitability released by a competent notified body replaces the technical documents. Also in this case, if the owner of an “*imbarcazione da diporto*” flying the flag of an EU member State intends to register the boat in an Italian register, it is enough to submit, instead of the ownership title, the certificate of deregistration from the EU Register with the identification of the owner and of the craft.

Pursuant to Article 22, the competent office which holds the register releases the following navigation documents for the “*navi da diporto*”:

- the navigation license enabling navigation on maritime and inland waters without any limit;
- the Safety Certificate attesting the seaworthiness.

According to the same Article, after the registration of the “*imbarcazioni da diporto*” in the registers kept by the competent Authority, the released documents are:

- the navigation license enabling navigation allowed by the unit’s design characteristics, mentioned in the declaration of conformity, released by the manufacturer or his agent established in the EU territory, or a certificate of suitability released by a notified body;
- the Safety Certificate attesting the seaworthiness.

“*Imbarcazioni da diporto*” without Ce marking can navigate without any limit on maritime and inland waters or up to six miles from the coastline on maritime waters and without any limits on inland waters, whereas “*imbarcazioni da diporto*” with Ce marking can navigate:

- without any limit, for the units with design category A;
- with wind strength up to 8 and waves up to 4 meters high for the units with design category B;

²⁰ The example of EU declaration of conformity is included in the Attachment VIII of the Legislative Decree no. 171 of 18 July 2005. The attachment VIII of the Legislative Decree no. 171/2005 has been replaced by Article 46, paragraph 3, of the Legislative Decree no. 5 of 11 January 2016, implementing Directive 2013/53/EU.

- with wind strength up to 6 and waves up to 2 meters high for units with design category C;
- on protected waters, with wind strength up to 4 and waves up to 0,3 meters high for units with design category D.

Article 22 refers to the Attachment II that specifies the above-mentioned categories and the essential requirements for the design and construction of the pleasure craft. The Attachment II of the Legislative Decree no. 171/2005 has been replaced by Article 46, paragraph 3, of the Legislative Decree no. 5 of 11 January 2016, implementing Directive 2013/53/EU on pleasure craft and personal watercraft which has repealed the Directive 94/25/EC. The categories are based on the environmental conditions for navigation, namely wind force and wave height²¹:

Design category	Wind Force (Beaufort scale)	Significant wave height (H $\frac{1}{3}$, meters)
A	exceeding 8	exceeding 4
B	up to, and including, 8	up to, and including, 4
C	up to, and including, 6	up to, and including, 2
D	up to, and including, 4	up to, and including, 0,3

After the registration, both “*navi da diporto*” and “*imbarcazioni da diporto*” fly the national flag (Article 25 Legislative Decree 171/2005).

The discipline concerning the last category “*natanti da diporto*” is contained in Article 27 that exempts them from the requirement of the registration in the registers provided in Article 15, from the licensing requirement provided in Article 23²² and from the Safety Certificate requirement provided in Article 26²³.

Furthermore, on request, “*natanti da diporto*” may be entered in registers provided for the “*imbarcazioni da diporto*”, assuming their legal regime.

“*Natanti da diporto*” without Ce marking can navigate:

- within 6 nautical miles from the coastline;

²¹ Attachment II, explanatory note A: “A pleasure craft given design category A is considered to be designed for winds that may exceed wind force 8 (Beaufort scale) and significant wave height of 4 m and above but excluding abnormal conditions, such as storm, violent storm, hurricane, tornado and extreme sea conditions or rogue waves”.

²² Article 23 of the Legislative Decree 171/2005 regulates the “Navigation license”.

²³ Article 26 of the Legislative Decree 171/2005 regulates the “Safety Certificate” attesting the seaworthiness of the pleasure craft.

- within 12 nautical miles, if type-approved for navigation without any limit or if they are recognized as suitable for it by a notified or authorized technical body²⁴;
- within 1 nautical mile, small pleasure boats as jolly-boat, rowing catamaran, beach canoes, paddle boat, windsurf boards, sailing small pleasure boats with a sail area not exceeding 4 square meters, jet skis and similar.

“Natanti da diporto” with Ce marking can navigate within the limits provided by the design categories to which they belong.

As already mentioned, Article 1 of the Legislative Decree no. 171/2005 refers to *“[...] ships listed in Article 3 of Law no. 172 of 8 July 2003”* and it includes them under the scope of the Italian Pleasure Sailing Code.

Article 3 of Law no. 172 of 8 July 2003 provided that craft of a hull length of more than 24 meters and not exceeding 1.000 tons of gross tonnage used in international navigation, exclusively destined to be hired for the purpose of tourism, can be entered into the International Register and, with this registration, these craft:

- are suitable for the carriage of a number of passengers not exceeding 12, excluding crew members;
- are provided with a class certificate released by an authorized body pursuant to the Legislative Decree no. 314 of 3 August 1998 as amended by the Legislative Decree no. 169 of 19 May 2000;
- are subject to the technical requirements provided by the safety regulation issued by the Minister of Infrastructure and Transport.

The provision refers to the International Register, established by Article 1 of the Law Decree no. 457 of 30 December 1997:

“È istituito il registro delle navi adibite alla navigazione internazionale, di seguito denominato ‘Registro internazionale’, nel quale sono iscritte, a seguito di specifica autorizzazione del Ministero dei trasporti e della navigazione, le navi adibite esclusivamente a traffici commerciali internazionali. [...]”

Il Registro internazionale di cui al comma 1 è diviso in tre sezioni nelle quali sono iscritte rispettivamente:

- a) *le navi che appartengono a soggetti italiani o di altri Paesi dell’Unione europea ai*

²⁴ In this case, a copy of the type-approval certificate must be kept on board together with the declaration of conformity or the attestation of suitability released by the body.

sensi del comma 1, lettera a), dell'articolo 143 del codice della navigazione, come sostituito dall'articolo 7²⁵;

- b) le navi che appartengono a soggetti non comunitari ai sensi del comma 1, lettera b), dell'articolo 143 del codice della navigazione²⁶;*
- c) le navi che appartengono a soggetti comunitari o non comunitari, in regime di sospensione da un registro comunitario o non comunitario, ai sensi del comma secondo dell'articolo 145 del codice della navigazione²⁷, a seguito di locazione a scafo nudo a soggetti giuridici italiani o di altri Paesi dell'Unione europea."*

("The Register of ships intended for the international navigation, hereinafter called 'International Register' is established, in which, after a specific authorization of the Ministry of Infrastructures and Transport, can be registered only craft exclusively used for international commercial traffic. [...] The International Register, referred to in the first paragraph, is divided into three sections, in which the following craft are registered:

- a) craft owned by Italian or EU individuals, pursuant to Article 143, paragraph 1, letter a) of the Italian Navigation Code, as replaced by article 7;
- b) craft owned by non-EU individuals pursuant to Article 143, paragraph 1, letter b) of the Italian Navigation Code;

²⁵ Article 143, paragraph 1, letter a): *"le navi che appartengono, per una quota superiore a dodici carati, a persone fisiche, giuridiche o enti italiani o di altri Paesi dell'Unione Europea"* ("the ships belonging to Italian or EU natural or legal persons or entities for more than 12 carats").

²⁶ Article 143, paragraph 1, letter b): *"le navi di nuova costruzione o provenienti da un registro straniero non comunitario, appartenenti a persone fisiche, giuridiche o enti stranieri non comunitari i quali assumano direttamente l'esercizio della nave attraverso una stabile organizzazione sul territorio nazionale con gestione demandata a persona fisica o giuridica di nazionalità italiana o di altri Paesi dell'Unione Europea, domiciliata nel luogo di iscrizione della nave, che assuma ogni responsabilità per il suo esercizio nei confronti delle autorità amministrative e dei terzi, con dichiarazione da rendersi presso l'ufficio di iscrizione della nave, secondo le norme previste per la dichiarazione di armatore"* ("the ships newly built or coming from a non-EU foreign register belonging to natural persons, legal entities or non-EU foreign entities who directly assume the ship's operations through a permanent establishment on national territory with management of a natural or legal person with Italian or other EU countries' nationality, domiciled at the place of registration of the ship, which assumes all responsibility for the use of the latter toward administrative authorities and third parties, with a declaration to be made at the ship's registration office, according to the rules for shipowner's declaration").

²⁷ Article 145, paragraph 2: *"Agli effetti degli articoli 149 e 155 del codice della navigazione possono ottenere l'iscrizione in speciali registri nazionali, le navi che risultino già iscritte in un registro straniero ed in regime di sospensione a seguito di locazione a scafo nudo"* ("For the purposes of Articles 149 and 155 of the Navigation Code, ships already registered in a foreign register and in a suspension regime as a consequence of a bareboat charter may obtain the registration in special national registers").

- c) craft owned by EU and non-EU individuals, under suspension from a EU or non-EU register, pursuant to Article 145, paragraph 2 of the Italian Code of Navigation, as a result of the bare boat charter to Italian or other Member States' legal entities").

Craft entered in the International Register may not perform cabotage transport operations (except for some cases) for which the provision of Article 224 of the Italian Navigation Code must be taken into account²⁸.

Compared to Article 1, paragraph 4, of the Law Decree no. 457 of 30 December 1997, according to which pleasure craft cannot be entered into the International Register, Article 3 of Law no. 172/2003 recognizes an exemption for the registration in that Register of the craft with the above-mentioned characteristics provided that they are exclusively destined to be hired for the purpose of tourism. Furthermore, they are exempted from the limitation concerning cabotage transport service²⁹.

4. EVOLUTION OF THE REGULATORY FRAMEWORK

The regulatory framework concerning the nautical tourism, already repeatedly revised, is still evolving. The adoption of the Directive 2013/53/EU³⁰ on pleasure craft and personal watercraft, aimed at harmonizing the laws, regulations and administrative provisions of the member States and the characteristics of pleasure craft, has extended the definition of "watercraft" to new categories and purposes.

It repealed the Directive 94/25/EC, covering only pleasure craft of a minimum hull length of 2,5 meters and a maximum length of 24 meters, as amended by Directive 2003/44/EC³¹, which extended the application to personal watercraft (jet skis) intended for sport and leisure.

²⁸ According to which the cabotage service between Italian ports is reserved to EU shipowners using ships registered in an EU Member State and flying the flag of the same State.

²⁹ Article 3 of Law no. 172/2003, paragraph 5.

³⁰ Directive 2013/53/EU of the European Parliament and of the Council of 20 November 2013 on pleasure craft and personal watercraft and repealing Directive 94/25/EC published in the Official Journal of the European Union no. L. 354/90 of 28 December 2013.

³¹ Directive 94/25/EC of the European Parliament and of the Council of 16 June 1994 on the approximation of the laws, regulations and administrative provisions of the Member States relating to pleasure craft published in the Official Journal of the European Communities no. L. 164/15 of 30 June 1994. On the topic see: M. Grigoli, *L'attuazione della direttiva 94/25/CE apporta un significativo contributo alla sicurezza della navigazione da diporto*, in *Trasporti*, 1997, p. 5 ff.

The subject matter of the Directive 2013/53/EU concerns the requirements for the design and manufacture of products listed in Article 2:

“This Directive shall apply to the following products:

- (a) pleasure craft and partly completed pleasure craft;*
- (b) personal watercraft and partly completed personal watercraft;*
- (c) components listed in Annex II when placed on the Union market separately, hereinafter referred to as ‘components’;*
- (d) propulsion engines which are installed or specifically intended for installation on or in watercraft;*
- (e) propulsion engines installed on or in watercraft that are subject to a major engine modification;*
- (f) watercraft that are subject to major craft conversion”.*

Indeed, the aim of the Directive is to guarantee that these products, placed on the EU market or put into service, comply with the health, safety and environmental standards provided by the EU legislation and the economic operators are responsible for the compliance of products, in relation to their respective roles in the supply chain.

For the purpose of this paper, particular attention should be paid to the definitions given by the Directive. Pursuant to Article 3:

- “‘watercraft’ means any pleasure craft or personal watercraft;*
- ‘pleasure craft’ means any watercraft of any type, excluding personal watercraft, intended for sports and leisure purposes of hull length from 2,5 m to 24 m, regardless of the means of propulsion;*
- ‘personal watercraft’ means a watercraft intended for sports and leisure purposes of less than 4 m in hull length which uses a propulsion engine having a water jet pump as its primary source of propulsion and designed to be operated by a person or persons sitting, standing or kneeling on, rather than within the confines of, a hull”.*

Of course, these definitions and all the provisions have been properly transposed and implemented in national law by the Legislative Decree no. 5 of 11 January 2016³², but, compared to the Directive, the category of *“natanti*

³² With Law no. 167 of 7 October 2015 (“Law enabling the Government to Revise the Pleasure Sailing Code”) the Italian Government was delegated to adopt, within two years, one or more legislative decrees in order to revise and integrate the Italian Pleasure Sailing Code and to

da diporto” has been added in the scope and, for its purposes, the Decree has defined the following *factispecies*:

- *“unità da diporto: ogni costruzione destinata ad attività sportive o ricreative, classificabile come imbarcazione da diporto o natante da diporto o moto d’acqua”* (“pleasure craft: any construction intended for sports and leisure purposes, classifiable as ‘imbarcazione da diporto’ or ‘natante da diporto’ or ‘moto d’acqua’”);
- *“imbarcazione da diporto: un’unità da diporto con lunghezza dello scafo superiore a dieci metri e fino a ventiquattro metri, indipendentemente dal mezzo di propulsione”* (“pleasure boat: a pleasure craft of hull length more than 10 meters and up to 24 meters, regardless of the means of propulsion” – translation in accordance with the wording of the Directive 2013/53/EU);
- *“natante da diporto: un’unità da diporto con lunghezza dello scafo compresa tra i due metri e cinquanta centimetri e i dieci metri, indipendentemente dal mezzo di propulsione e con esclusione delle moto d’acqua”* (“small pleasure boat: a pleasure craft of hull length from 2,5 m to 10 m, regardless of the means of propulsion and with the exclusion of the jet ski”);
- *“moto d’acqua: un’unità da diporto con lunghezza dello scafo inferiore a quattro metri, che utilizza un motore di propulsione con una pompa a getto d’acqua come fonte primaria di propulsione e destinata a essere azionata da una o più persone sedute, in piedi o inginocchiate sullo scafo, anziché al suo interno”* (“jet ski or personal watercraft: a pleasure craft of less than 4 meters in hull length which uses a propulsion engine having a water jet pump as its primary source of propulsion and designed to be operated by a person or persons sitting, standing or kneeling on, rather than within the confines of a hull” – translation in accordance with the wording of the Directive 2013/53/EU).

Considering that the subject matter of the Legislative Decree no. 5 of 11 January 2016 concerns the requirements for the design and manufacture of pleasure craft and the rules on their free movement in the European Union, the comparison of these definitions with those provided by the Italian Pleasure Sailing Code (which is currently being revised) shows some differences.

regulate different matters, among them: the administrative procedures and navigation of pleasure craft, including ships listed in Article 3 of Law no. 172 of 8 July 2003; control activity in the field of safety of the pleasure navigation; revision on the rules of penalties.

On the one hand, indeed, the *factispecies* provided by the Legislative Decree 5/2016 do not include the category of “*navi da diporto*” (pleasure ship, with hull length of more than 24 meters): that could result in a “legislative gap” or in the application of different rules in the field of the requirements prescribed for the design and manufacture.

On the other hand, although the Legislative Decree 5/2016 defines and includes in its scope the personal watercraft, it gives narrower definition of “*natante da diporto*” that excludes both the jet skis (defined autonomously) and the small pleasure craft with hull length less than 2,50 meters which are not jet skis.

The lack of full alignment of the definitions contained in the aforementioned norms can cause some problems in their application phase.

5. CONCLUDING REMARKS

In the light of the analysis carried out above, it emerges that not only at international and EU level, but even at the national one, laws ruling the same field provide partially different definitions for the same categories of craft, causing a possible mismatch.

When the Legislator decides to define a word, it is never just a matter of definition, but is strictly related to the effective application of the relevant law itself. Due to an ever-increasing multiplication of rules governing various aspects of the same subject, which often touch different interests of various stakeholders, the Legislator risks of not having completely clear the overall regulatory framework currently in force and, consequently, sometimes the “victim” of the incessant political debate in Parliament, of issuing rules that are not fully coordinated between each other, the fact which may cause legal uncertainty.

Having in mind the principles and guiding criteria set out by Law no. 167 of 7 October 2015 (“Law enabling the Government to Revise the Pleasure Sailing Code” by means of one or more legislative decrees), the first of which consists in the coordination and harmonization of the rules on pleasure navigation, and in order to avoid problems of interpretation and applicability of discipline, it would be suggestable that all the norms in the sector of pleasure navigation, at least at Italian level, would keep the same categories and definitions of the craft used.

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Sažetak:

KLASIFIKACIJA PLOVILA ZA RAZONODU U TALIJANSKOM PRAVNOM SUSTAVU: PITANJE DEFINICIJE ILI NEČEGA VIŠE?

Potreba za reguliranjem fenomena nautičkog turizma, koja je snažno prisutna na Mediteranu, potaknula je talijanskog zakonodavca na donošenje posebnog pravnog okvira za plovila za razonodu, koji se razlikuje od općeg talijanskog Pomorskog zakonika.

Odredbe sadržane u talijanskom Zakonu o rekreacijskoj plovidbi (tzv. "Codice della Nautica da Diporto") predviđaju pravnu klasifikaciju različitih vrsta plovila za razonodu ("unità da diporto", "nave da diporto", "imbarcazione da diporto", "natante da diporto"). Na taj se način dodatno razrađuje definicija pojma "brod" iz čl. 136. talijanskog Pomorskog zakonika.

Naime, u prvom stavku toga članka, u kojemu je naveden svaki plovni objekt namijenjen za prijevoz vodenim putem, kao i za tegljenje ili ribolov, također se spominju i plovila namijenjena za rekreacijsku plovidbu i druge svrhe.

Nadalje, usvajanjem direktiva EU-a s ciljem usklađivanja zakona, propisa i administrativnih odredaba država članica, a u pogledu karakteristika plovila za razonodu, proširena je definicija plovnog objekta na nove kategorije i namjene. Stoga se pravni okvir, koji je više puta revidiran, još uvijek mijenja.

Članak će se usredotočiti na analizu postojećeg talijanskog i europskog pravnog okvira, na postojeće razlike između trgovačkih plovila i plovila za razonodu te na uočavanje posljedica koje proizlaze iz ovih razlika, a s osobitim osvrtom na relevantne kriterije i ograničenja propisana za kategorije plovila za razonodu.

Ključne riječi: plovni objekt; plovilo za razonodu; brod; talijanski Zakon o rekreacijskoj plovidbi.