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Preliminary Report

Sustainable Blue Economy in the Italian Legal System

Messina Research Unity

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1. Preliminary remarks

According to the planned activities, the Messina-based RU is in charge to carry out a survey and a qualitative analysis of selected laws and regulations in force in the Italian legal system relating to the Sustainable Blue Economy, especially in the areas of fishing, marine mineral resources and marine energy production.
The first six months of the activities of the project have been devoted to a preliminary assessment of some of these laws and regulations, taking into account both the "rules" directly adopted by Italy and those issued by the European Union (EU). Since some specific points of these domestic or EU regulations have been necessary evaluated by the other three units, at this stage, the Messina-based RU has confined itself on an initial appraisal of the relevant legislation officially deposited at the UN DOALOS (United Nations Division for Ocean Affairs and the Law of the Sea) on the one hand, and on the relevant EU rules adopted in the framework of EU Integrated Maritime Policy, on the other.
In some cases, however, Italian legislation has not fully complied with that of the EU. To this end, in the last part of the present preliminary report, the controversial legal issues related to the concessions authorising the exploitation of Italian maritime beaches are presented as a significant case-study.
More specifically, the preliminary report is structured into the following sections:

- General legal framework: Optional and mandatory adoption of laws and regulations concerning maritime zones and marine activities under International Law
- Relevant Italian Legislation deposited at the United Nations Division for Ocean Affairs and the Law of the Sea
- Relevant EU rules adopted in the framework of the EU Integrated Maritime Policy
- Case-study: Concessions authorising the exploitation of Italian maritime beaches
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2. General legal framework: Optional and mandatory adoption of laws and regulations concerning maritime zones and marine activities under International Law

Coastal States may adopt a number of acts aimed at regulating different categories of activities carried out in the maritime zones over which they exercise sovereignty, sovereign rights or jurisdiction. Likewise, a legislative and regulatory function concerning maritime activities carried out by ships is exercised by the **flag States** of those ships.
Furthermore, under important international treaties, both Coastal States and Flag States have a clear **obligation to adopt certain categories of laws and regulations**. Such an obligation is imposed by the United Nations Convention on the Law of the Sea (UNCLOS), for example, with regard to the protection and preservation of the marine environment.

Indeed, in its advisory opinion of 21 May 2024 (*Request for an advisory opinion submitted by the Commission of Small Island States on Climate Change and International Law*, para. 441) the International Tribunal for the Law of the Sea (ITLOS) clarified that:

> "(g) Under article 211 of the Convention, States parties have the specific obligation to adopt laws and regulations to prevent, reduce and control marine pollution from GHG [greenhouse gases] emissions from vessels flying their flag or of their registry, which must at least have the same effect as that of generally accepted international rules and standards established through the competent international organization or general diplomatic conference.
> (h) Under articles 213 and 222 of the Convention, States parties have the specific obligations to enforce their national laws and regulations and to adopt laws and regulations and take other measures necessary to implement applicable international rules and standards established through competent international organizations or diplomatic conferences to prevent, reduce and control pollution of the marine environment from anthropogenic GHG emissions from land-bases sources and from or through the atmosphere, respectively
> (i) Under article 217 of the Convention, States parties have the specific obligation to ensure compliance by vessels flying their flag or the registry with applicable international rules and standards established through the competent international organization or general diplomatic conference and with their laws and regulations for the prevention, reduction and control of marine pollution from GHG emissions from vessels. To this end, they shall adopt laws and regulations and take other measures necessary for their implementation."

In some maritime zones, the ITLOS (*Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission*, advisory opinion of of 2 April 2015, para. 102) has conferred international law effects to the domestic laws and regulations adopted by the coastal State for the purpose conserving the living resources and protecting the marine environment According to the ITLOS, the domestic legislative or regulatory acts applicable to the exclusive economic zone EEZ eventually become part of the "legal order for the seas and oceans":

> "One of the goals of the [UNCLOS], as stated in its preamble, is to establish "a legal order for the seas and oceans which . . . will promote" *inter alia* "the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment". Consequently, laws and regulations adopted by the coastal State in conformity with the provisions of the Convention for the purpose of conserving the living resources and protecting and preserving the marine environment within its exclusive economic zone, constitute part of the legal order for the seas and oceans established by the Convention and therefore must be complied with by other States Parties whose ships are engaged in fishing activities within that zone"

In the light of these two advisory opinions of the ITLOS, it can be observed that:

a) In the framework of their blue-economy policy and goals, the EU and Italy have the obligations to adopt as soon as possible laws and regulations to prevent, reduce and control marine pollution from GHG:
b) When Italy will effectively establish the EEZ, its laws and regulations applicable therein shall be in conformity with both UNCLOS and general international law. They shall constitute part of the "legal order for the seas and the oceans" and shall be complied with not only by Third-States vessels but also by their flag States.

3. Relevant Italian Legislation deposited at the United Nations Division for Ocean Affairs and the Law of the Sea

Among the Italian laws deposited at the UN DOALOS, the following may be relevant for the regulation of the blue-economy:

- Law No. 613 of 21 July 1967 on the surveying and production of oil and gas in the territorial Sea and continental shelf, and Amendments to Law No. 6 of 11 January 1957 on the surveying and production of oil and gas
- Law No. 61 of 8 February 2006 on the establishment of an ecological protection zone beyond the outer limit of the territorial sea
- Law No. 91 of 14 June 2021 on the Institution of an exclusive economic zone beyond the external limit of the territorial sea

3.1 Law No. 613 of 21 July 1967 on the surveying and production of oil and gas in the territorial sea and continental shelf, and amendments to Law No. 6 of 11 January 1957 on the surveying and production of oil and gas.

In the preliminary report prepared by the Macerata-based RU, some profiles of Law No. 613 of 21 July 1967 have already been taken into account. In the present report, it is considered appropriate to add that:

- Law No. 613/1967 was enacted on the bases of the Geneva Convention on Continental Shelf of 29 April 1958. Although Law No 689 of 2 December 1994, of ratification and execution of UNCLOS amended Article 1 in order to comply with the new definition of continental shelf, Law No. 613/1967 remains a very old and dated act. In view of the potential of the blue-economy and the objectives of green transition, Law No. 613/1967 would require at least further amendments.
- Law No. 613/1967 mainly regulates the authorisation profiles of prospecting, exploration and exploitation of mineral deposits of the continental shelf and the marine subsoil, providing in detail the bureaucratic procedure (which appears to be outdated if we consider EU public procurement law). Several rules are dedicated to tax matters.
- Law No. 613/1967 is lacking in terms of protection and preservation of marine environment and ecosystem; liability for environmental damage; possible impact of mining activities on the operation of submarine cables and pipelines.

3.2 Law No. 61 of 8 February 2006 on the establishment of an Ecological Protection Zone beyond the outer limit of the territorial sea

Until 2021, Italy, like other States in the Mediterranean – which constitutes a semi-enclosed sea under UNCLOS – did not consider it appropriate to establish an exclusive economic zone.
Nevertheless, by Law No 61/2006, Italy planned the establishment of a different category of marine area, called "Ecological protection zone" (EPZ). In implementation of this law, an Ecological protection zone in the north-west Mediterranean, the Ligurian Sea and the Tyrrhenian Sea was eventually established by Presidential Decree No. 209 of 27 October 2011.
The preamble to the Presidential Decree No. 209 refers to important international treaties[1], which should therefore be taken into account in the exercise by Italy of the jurisdiction provided for in its EPZ.
The Italian EPZ starts from the outer limit of the territorial sea (excluding the Strait of Sicily) and extends to the points and segments indicated in detail in Article 2 of the Presidential Decree No. 209/2011.
That said, the Italian EPZ constitutes a *sui generis* zone, whose legal regime has in common with that of the EEZ only the possibility for the coastal State to exercise jurisdiction in matters of protection and conservation of the marine environment. Neither sovereign rights nor the other spheres of jurisdiction established by Article 56 UNCLOS are granted to the coastal State. On the other hand, in its EPZ, Italy exercises jurisdiction with regard to the protection of underwater cultural heritage.
If the Italian EEZ is finally established, the question arises as to whether the EPZ will be retained. In this case, environmental protection jurisdiction should be absorbed by those conferred by UNCLOS in the EEZ, while the jurisdiction to protect the underwater cultural heritage would continue to be exercised on the basis of the presidential decree No 209 of 2011.

[1] "Having regard to agreements on the protection of the marine environment and the underwater cultural heritage, including: the Convention on the prevention of marine pollution by dumping of wastes and other matter signed in London on 29 December 1972, enforced on 30 August 1975, ratified by Law no. 305 of 2 May 1983, and the related Protocol pursuant to Law no. 87 of 13 February 2006; the Convention for the protection of the Mediterranean Sea from pollution, adopted in Barcelona on 16 February 1976, enforced on 12 February 1978 and related Protocols, ratified by Italy through Law no. 30 of 25 January 1979; the RAMOGE Agreement signed in Monaco on 10 May 1976 and ratified in Italy through Law no. 743 of 24 October 1980; the International Convention for the prevention of pollution from ships (MARPOL Convention 73/78) ratified by Law no. 662 of 29 September 1980, and subsequent changes, amended by protocol adopted in London on 17 February 1978, and enacted by Law no. 438 of 4 June 1982; the Convention on biodiversity signed in Rio de Janeiro on 5 June 1992, ratified by Law no. 124 of 14 February 1994, and in particular Decision IX/20 (Marine and coastal biodiversity) establishing protected marine areas beyond the national jurisdiction, adopted at the 9th Conference of the Parties to the Convention held in Bonn (Germany) from 19 to 30 May 2008; the Agreement on the conservation of cetaceans of the Black Sea, the Mediterranean and the contiguous Atlantic area, with Appendices and final act signed in Monaco on 24 November 1996, enforced on 1 June 2001, ratified by Italy through Law no. 27 of 10 February 2005; the International Agreement for the creation of a marine mammal sanctuary in the Mediterranean Sea signed in Rome on 25 November 1999, ratified by Law no. 391 of 11 October 2001; the UNESCO Convention on the protection of underwater cultural heritage adopted in Paris on 2 November 2001, ratified by Italy through Law no. 157 of 23 October 2009, ratifying and enforcing the Convention on the protection of the underwater cultural heritage, with Appendix, adopted in Paris on 2 November 2011, and regulations to align domestic legal regulations to the provisions of the Convention"

3.3 Law No. 91 of 14 June 2021 on the Institution of an Exclusive Economic Zone beyond the external limit of the territorial sea

In the preliminary report prepared by the Macerata-based RU, some profiles of Law No. 91 of 14 June 2021 have already been taken into account. In the present report, it is considered appropriate to add that:

- Pursuant to Article 2 of Law No. 91/2021, "[w]ithin the exclusive economic zone established under Article 1, Italy exercises the sovereign rights provided under the international rules in force". Thus, Article 2 does not confer to Italy the exercise of jurisdiction in the EEZ. This constitutes a difference with Article 56 (1) UNCLOS, which instead provides that in the EEZ the Coastal State has rights, jurisdiction and duties.
  More specifically, Article 56 (1) UNCLOS states:
  > "In the exclusive economic zone, the Coastal State has:
  > a) **sovereign rights** for the purpose of exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploration and exploitation of the zone, such as energy from the water, current and winds;
  > b) **jurisdiction** as provided for in the relevant provisions of the Convention with regard to: (i) the establishment and use of artificial islands, installations and structures; (ii) marine scientific research; (iii) the protection and preservation of the marine environment;
  > c) **other rights and duties** provided for in this Convention."
- The subsequent practice is, however, to attribute the exercise of jurisdiction to Italy in its future EEZ. Appropriately, Article 2 (b) of the *Agreement between the Italian Republic and the Republic of Croatia on the Delimitation of the Exclusives Economic Zones* (Rome, 24 May 2022), states:
  > "This Agreement is without prejudice to: (…)
  > b. the sovereign rights and the jurisdiction exercised by each Party in its exclusive economic zone in conformity with Article 56 of the United Nations Convention on the Law of the Sea."
- The possible future law of effective establishment of the Italian EEZ should therefore be formulated in a more precise manner, regulating the different categories of rights, jurisdiction and duties provided for by UNCLOS and other relevant international treaties. Moreover, such law should be without prejudice to the exclusive competence of the EU in the conservation of marine biological resources under the common fisheries policies

4. Relevant EU rules adopted in the framework of the EU Integrated Maritime Policy

The EU Integrated Maritime Policy (IMP) is based on the idea that the Union can draw higher returns from its maritime space with less impact on the environment by coordinating its wide range of interlinked activities related to oceans, seas and coasts. The IMP, in fact, aims at strengthening the so-called blue economy, encompassing all sea-based economic activities.

The EU IMP is a policy framework aiming to foster the sustainable development of all sea-based activities and coastal regions by improving the coordination of policies affecting the oceans, seas, islands, coastal and outermost regions and maritime sectors, and by developing cross-cutting tools.
The main objectives of the IMP and the corresponding fields of action are provided in the Communication on *An Integrated Maritime Policy for the European Union*, adopted by the European Commission on 10 October 2007 (COM(2007) 575), and consist of, *inter alia*:

- Maximising the sustainable use of the oceans and seas in order to enable the growth of maritime regions and coastal regions; and,

- Building a knowledge and innovation base for maritime policy through a comprehensive European Strategy for Marine and Maritime Research, via the Marine Strategy Framework Directive 2008/56/EC;

The IMP covers many converging policy fields, which, over the years, have been the object of many soft law instruments adopted mainly by the European Commission, like:

- In the area of *Blue growth*:
  The Communication on Blue Growth*: opportunities for marine and maritime sustainable growth*, adopted by the European Commission on 13 September 2012 (COM(2012)494), to unlock the potential of the blue economy and support the development of sustainable marine and maritime economic activities; the Communication on Innovation in the Blue Economy: realising the potential of our seas and oceans for jobs and growth, adopted by the European Commission on 8 May 2014 (COM(2014) 254); the Communication on offshore wind energy addressing the action needed to deliver on the Energy Policy Objectives for 2020 and beyond, adopted by the Commission on 12 December 2012 (COM(2008) 768); the Communication on the strategic guidelines for the sustainable development of EU aquaculture, adopted by the Commission on 29 April 2013 (COM(2013) 229); the Communication on Blue Energy: Action needed to deliver on the potential of ocean energy in European seas and oceans by 2020 and beyond, adopted by the Commission on 20 January 2014 (COM(2014) 8).
- In the area of Marine data and knowledge:
  The Communication whereby the European Commission launched the European marine and maritime research strategy, adopted on 3 September 2008 (COM(2008) 534).

The increasing human impacts on the oceans, together with the fast-growing demand and competition for maritime space for different purposes, such as fishing activities, offshore renewable energy installations and ecosystem conservation, have highlighted the urgent need for integrated ocean management, which prompted the European Parliament and the Council to adopt Directive 2014/89/EU establishing a framework for maritime spatial planning (MSP), which seeks to promote the sustainable growth of maritime economies and the use of marine resources through better conflict management and greater synergy between the different maritime activities. Directive 2014/89/EU has been transposed in Italy by the Legislative Decree n. 201 of 17 October 2016, which identifies the Ministry of Infrastructures and Sustainable Mobility as the competent authority for the implementation of the Directive. The Decree also establishes the Inter-ministerial Coordination Table at the Presidency of the Council of Ministers – Department of European policies.
The Decree of the President of the Council of Ministers, adopted on 1 December 2017, provided the Guidelines containing the criteria for the preparation of maritime space management plans. These

Guidelines provide for the identification of the areas to be considered for the drafting of maritime plans and the definition of the relevant areas in terms of land-sea interactions. Three reference maritime areas are identified, consistently with the definition of marine sub-regions pursuant to the Marine Environment Strategy Framework Directive (2008/56/EU): the Western Mediterranean Sea, the Adriatic Sea, the Ionian Sea and the Central Mediterranean Sea.
Following the publication of several Communications by the Commission on the subject, on 30 November 2011, the European Parliament and the Council adopted Regulation 1255/2011 establishing a programme to support the further development and implementation of the IMP. That Regulation was repealed during the Common Fisheries Policy (CFP) via Regulation 508/2014 on the European Maritime and Fisheries Fund.
On 5 June 2019, the European Parliament and the Council adopted Directive 2019/904 on the reduction of the impact of certain plastic products on the environment. That Directive has been transposed by the Legislative Decree n. 196 of 8 November 2021.
On 20 June 2019, the European Parliament and the Council adopted Directive 2019/1159 amending the previous Directives on the minimum level of training by seafarers and on mutual recognition of seafarers' certificates issued by the Member States. Directive 2019/1159 has been transposed by the Legislative Decree n. 194 of 8 November 2021.

5. Case-study: Concessions authorising the exploitation of Italian maritime beaches

The starting point is Directive 2006/123/EC of the European Parliament and the Council (commonly known as the "*Bolkestein* Directive"), which allows the application of competition principles and "contestability" through tenders to public concessions. According to Article 12 of this Directive, when the number of available authorizations for a specific activity is limited due to the scarcity of natural resources or technical capacity, Member States are required to apply a selection procedure among potential candidates. This procedure must guarantee impartiality and transparency, and specifically provide adequate publicity regarding the initiation, conduct, and completion of the procedure. Following such a procedure, authorizations must be granted for a limited duration, suitable for the type of activity, and there can be no provision for automatic renewal or the granting of other advantages to the outgoing provider or persons with special ties to that provider.
The Court of Justice of the European Union (CJEU) confirmed this approach in its judgment of 14 July 2016 (the so-called *Promoimpresa* ruling), stating that Article 12 of the Directive, concerning services in the internal market, must be interpreted to preclude a national measure that provides for the automatic extension of existing maritime and lakeside public domain authorizations for tourist-recreational activities without any selection procedure among potential candidates.
In contrast, the Italian Legislator (see Article 1, paragraphs 682 and 683 of Law No. 145 of 2018 and subsequently Article 182, paragraph 2, of Decree-Law No. 34 of 2020) has ordered the automatic and generalized extension until 31 December 2033 of public domain concessions already granted following an administrative procedure initiated before 31 December 2009. This was justified by the need to "ensure the protection and custody of Italian coasts granted under concession, as fundamental tourist resources of the country, and protect employment and the income of businesses in severe crisis due to the damage caused by climate change and consequent extraordinary calamitous events."
The Council of State (Plenary Assemblies Nos. 17 and 18 of 2021), reaffirming the applicability of the European Directive, emphasized that the extension regime provided by the legislator until 2033 is likely to create a barrier to the entry of new operators, contrary to the economic liberalization objectives pursued by Europe. However, in light of a context of objective internal regulatory

uncertainty, it was decided to "modulate the temporal effects" of this decision by postponing the effects of the Plenary Assembly judgment of the Council of State to 31 December 2023. This was expressly done to ensure that administrations have a reasonable amount of time to immediately begin operations necessary for initiating new tender procedures.
Subsequently, the Italian Government, in converting the so-called “milleproroghe decree for the year 2023” (containing "Urgent provisions on legislative terms" - Law No. 14 of 24 February 2023), further modified the terms of the issue by introducing (Article 10-quater, paragraph 3) an additional one-year extension of the expiration date of the existing concessions (which Law No. 118 of 2022 had already extended to 31 December 2024) and thus until 31 December 2025. Furthermore, (paragraph 4-bis of Article 4 of Law No. 118 of 2022) it prohibited the granting authorities from issuing new calls for the allocation of maritime, lakeside, and river public domain concessions for tourist-recreational and sporting purposes until the adoption of legislative decrees aimed at reorganizing and simplifying the regulations concerning such concessions.

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