

# A Comparative Study of Compulsory Wreck Removal under Croatian and Italian Maritime Law

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# Structure of the lecture

- Introduction
- Sources of maritime law on compulsory wreck removal
- Geographic scope of application of the compulsory wreck removal rules
  - Croatian and Italian EEZs in the Adriatic
- The notion of wreck
- The meaning of hazard
- The competent authorities and procedure
- Liability and insurance
- Real rights on the removed wreck / security for the claims of the competent authorities

# Introduction

- Subject of the lecture (maritime wreck, compulsory removal, comparative approach: Italy – Croatia – WRC)
- Legal concept of compulsory wreck removal – protection of marine environment (prevention/**intervention**/compensation)
- Wreck removal vs. salvage, recovery, the law of finds
- National laws
- Nairobi WRC 2007 (in force 14/4/2015, 56 SPs, 78,05% WT)

# Sources of maritime law on WR

## Croatia

- Party to the WRC (11/10/2017); opt-in clause (WRC, art. 3.2.)
- Maritime Code 2004 as amended (MC)
  - Chapter IV, Part VIII – Recovery and removal of wrecks and sunken objects:
    1. **General provisions (art. 840.a – 840.č)**
    2. Recovery of wrecks and sunken objects (art. 840.ć – 840.i)
    3. **Compulsory removal of wrecks and sunken objects (840.j – 840.z)**
- MC largely implements the WRC regime + extension mutatis mutandis on sunken and stranded objects
- Concurrent application MC, WRC
- Constitution, art. 141: in case of a conflict, international treaty prevails over domestic law

# Sources of maritime law on WR

## Italy

- Signatory to the WRC; no ratification yet
- Navigation Code 1942 as amended (Codice della navigazione) (NC)
- Regulation for the enforcement of the Navigation Code (marine navigation) 1952 (RENC)
- Maritime law concept of compulsory removal of wrecks and submerged objects (rimozione di relitti, rimozione di cose sommerse)
- NC art 72 (removal of submerged materials), 73 (removal of a submerged ship or aircraft), 84 (injunction of the Maritime Authority for reimbursement of expenses), 1276 (final and complementary provisions of the NC on removal of submerged objects)
- RENC, art. 89 (removal of submerged materials), 90 (removal of a submerged ship or aircraft), 91 (removal by private persons), 92 (removal *ex officio*)
- *Rimozione vs. ricupero, ritrovamento, soccorso, assistenza*

# The geographic scope of application of the rules on compulsory wreck removal

## **Croatia**

- MC provisions on compulsory WR apply to TS, IW, maritime domain land area, EEZ
- WRC applies in EEZ and in the territory of Croatia, incl. TS, IW, inland)

# The geographic scope of application of the rules on compulsory wreck removal

## **Italy**

- NC regime of WR applies in IW and TS (+ analogue application inland)
- art. 72 on removal of submerged goods and materials applies in the ports, bays and canals
- Art. 73 on removal of a submerged ship or aircraft applies in the ports, bays, canals and in the TS

# The geographic scope of application of the rules on compulsory wreck removal

## The WRC

- WRC art. 3.1. and 1.1. – the Convention area (EEZ or similar maritime zone established under international law)
- WRC art. 3.2. - opt in clause (a SP may apply the WRC in its territory)
- WRC in the Adriatic: Croatian IW, IW, EEZ
  - Croatian proclamation of the EEZ 5.2.2021. with the effect from 13.2.2021. (previously ecological and fisheries protection zone)
  - The Italian Act on Establishment of an EEZ (Law n. 91 of 14.6.2021) in force since 8.7.2021. but the final proclamation is subject to a Presidential decree following a prior resolution of the Council of Ministers on the proposal of the Minister of Foreign Affairs.
  - Temporary delimitation between Croatian and Italian EEZs will follow the delimitation line of the continental shelf under the 1968 Agreement between Yugoslavia and Italy and the 2005 Agreement between Croatia and Italy on the precise determination of the delimitation line of the continental shelves of Croatia and Italy.
- Cooperation in protecting and preserving the marine environment in the Adriatic; potential wrecks affecting both countries in question (e.g. UND Adriatic, Feb. 2008)



# The notion of wreck

## Croatia

- MC art. 840.a (1):

A wreck, following upon a maritime casualty, means:

(a) a sunken or stranded vessel or floating craft, or

(b) any part of a sunken or stranded vessel or floating craft, including any object that is or has been on board such a vessel or floating craft, or

(c) any object that is lost at sea from a vessel or a floating craft and that is stranded, sunken or adrift at sea, or

(d) a vessel or a floating craft that is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the vessel or floating craft or any property in danger are not already being taken.

(e) The term wreck does not relate to floating platforms that, at the time of maritime casualty, were on location positioned for the exploration or exploitation of the seabed.

(f) The term wreck relates to vessels and floating craft under construction.

- Wreck in relation to certain types of maritime craft (excl. fixed offshore facilities, floating platforms engaged in drilling operations; what about warships? MC + / WRC -)
- Wreck in relation to a maritime casualty (excl. gradual deterioration of a vessel in situ);
- Overlap of WR and salvage

# The notion of wreck

## Italy

- No legal definition of a wreck or a shipwreck
- NC does not recognise a single standard notion of a wreck
- NC refers to submerged objects (It. le cose sommerse), submerged ship (It. la nave sommersa), submerged aircraft (It. l'aeromobile sommerso) wreck (It. relitto), shipwreck (It. naufragio, nave naufragata) or wrecks of navigation (It. relitti della navigazione)
- The meanings vary depending on the purpose of the respective legislative provisions and has to be deduced from the relevant maritime law concepts dealing with wrecks, including the wreck removal (It. rimozione di cose sommerse) , recovery of wrecks (It. ricupero) , and the maritime law of finds (It. ritrovamento)
- The focus here is on the meaning of the terms submerged objects, submerged ship and wreck in the context of the CWR (la rimozione di cose sommerse)

# The notion of wreck

## Italy (ctd.)

- Submerged objects (le cose sommerse) include:
  - goods or other materials submerged in ports, bays and canals (NC, art. 72)
  - ships and aircraft submerged in ports, bays, canals and in the territorial sea (NC, art. 73)
  - art. 73 vs. art. 72 – different scope of geographical application; different circle of persons responsible for the removal

# The notion of wreck

## Italy (ctd.)

- **ship** is any structure intended for transport by water, including for towing, fishing, pleasure boating, or other purposes (NC, art. 136)
- air cushion vehicles (hovercraft)
- vessels under construction provided they have been launched
- mobile floating facilities used for any service relating to navigation or traffic in maritime or inland waters
- off-shore platforms used in exploration or exploitation of seabed resources as long as they maintain their floating ability and mobility, unless they are at destination fixed to the seabed
- Excl. floating rafts, pontoons, buoys, floating docks, floating beacons, floating craft permanently fixed to the shore or to the seabed, fish cages, other aquaculture equipment and similar craft

# The notion of wreck

## Italy (ctd.)

- **goods** and other **materials** submerged in ports, bays and canals (NC, art. 72)
- the term “goods” (It. *merci*) relates primarily to the goods in commerce, in other words to cargoes
- the term “materials” refers to all the things fallen into the water that retain their physical individuality, such as things that were on board of a ship or an aircraft (other than cargo), the appliances and parts of a ship or an aircraft accidentally detached, etc. including the things that originated from the mainland and have no connection with a marine adventure
- when the submerged goods or other materials posing a hazard to the environment or the safety of navigation are located on board or contained within a wrecked ship or aircraft, the order for their removal should be issued based on art. 73 of the Navigation Code regulating the removal of a submerged ship or aircraft
- *Consiglio di Stato, Section VI, 30 October 1985, n. 564, Ministero della marina mercantile vs. Atlantska Plovidba: a case involving an order for the removal of dangerous cargo located on board a sunken ship in the Italian territorial sea; the Council of State held that NC art. 73 necessarily applied because the submerged ship carried a cargo capable of creating a danger to navigation, and the cargo remained contained in the wreck. Consequently, the obligation to remove the dangerous cargo was imposed on the shipowner (and not on the cargo interests) by virtue of art. 73. However, the Council of State indicated that this matter was completely independent from the legal relationships (real or personal) between the shipowner and the owner of cargo.*

# The notion of wreck

## Italy (ctd.)

- **submersion** as a condition for the application of the compulsory removal regime – problems in the interpretation (complete or partial submersion? grounded, stranded, capsized vessels, vessels adrift at sea?);
- narrowing the possibility of the application of the WR regime to the detriment of the safety of navigation
- the prevailing position:
  - submersion means loss of buoyancy, caused by a total or a partial sinking of a vessel or a floating craft, should not be assimilated with the total loss of the vessel or a floating craft
  - submersion of an aircraft or of goods or other materials means a total sinking to the extent that the object is completely covered by water.

# The meaning of hazard

## Croatia

- compulsory wreck removal regime applies to the wrecks that present a hazard to the safety of navigation or to the environment
- MC art. 840.a (4 ) = WRC, art. 1.4:
  - Hazard** means any condition or threat that:
    - (a) poses a danger or impediment to navigation; or
    - (b) may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests.
- MC art. 840.a (5) = WRC art. 1.6:
  - Related interests** are interests directly affected or threatened by a wreck, such as:
    - (a) maritime coastal, port and estuarine activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned;
    - (b) tourist attractions and other economic interests of the area concerned;
    - (c) the health of the coastal population and the wellbeing of the area concerned, including conservation of marine living resources, flora and fauna; and
    - (d) offshore and underwater infrastructure.

# The meaning of hazard

## Croatia (ctd.)

- the general principle of **proportionality** of the compulsory removal measures taken by the public authorities in relation to the hazard posed by the wreck (MC art. 840.j = WRC art. 2 . 1. – 3.)
- the **criteria** for determining whether a wreck poses a hazard (non-exhaustive list) (MC art. 840.l = WRC art. 6 ):
  - (a) the type, size and construction of the wreck; (b) depth of the water in the area;
  - (c) tidal range and currents in the area; (d) particularly sensitive sea areas identified or a clearly defined EFPZ where special mandatory measures have been adopted for the prevention of marine pollution from ships;
  - (e) proximity of shipping routes or established traffic lanes; (f) traffic density and frequency;
  - (g) type of traffic; (h) nature and quantity of the wreck's cargo, the amount and types of oil (such as bunker oil and lubricating oil) on board the wreck and, in particular, the damage likely to result should the cargo or oil be released into the marine environment;
  - (i) vulnerability of port facilities; (j) prevailing meteorological and hydrographical conditions;
  - (k) submarine topography of the area; (l) height of the wreck above or below the surface of the water at lowest astronomical tide;
  - (m) acoustic and magnetic profiles of the wreck; (n) proximity of offshore installations, pipelines, telecommunications cables and similar structures; (o) any other circumstances that might necessitate the removal of the wreck



# The meaning of hazard

## Italy

- the concept of **hazard** (It. *pericolo*) and **obstacle to navigation**
- the Maritime Authority must first assess and determine that a wreck poses a hazard or an obstacle to navigation (at its own discretion) in order to apply the compulsory wreck removal measures (NC, art. 72.2, 73.2, 73.4)
- no legislative definition of the terms hazard and obstacle to navigation, no particular criteria prescribed to be taken into account when making the assessment
- case law (Consiglio di Stato, Section VI, 30 October 1985, n. 564, Ministero della marina mercantile vs. Atlantska Plovidba):
  - *an obstacle to navigation exists when the circumstances of submersion are such as to hinder free navigation; the assessment is to be made by simple reference to the interrelation, in a strictly material sense, between the submerged object and the other activities that take place in the respective area of the sea*
  - *the determination of hazard goes beyond the simple reference to the strictly material criteria; the term hazard in the context of art. 72 and 73 of the NC is intended to refer to “all other cases in which, although there is no objective obstruction to navigation, the substantial interests that are expressed in the areas adjacent to the location where the submersion occurred can also be affected”; the term hazard should be interpreted by reference to the “multiplicity of needs for which the sea is a means of relative satisfaction” , such as fisheries, aquaculture, tourism, catering, infrastructure, offshore mining, windfarms, etc.*

# Authority and procedure

## Croatia

- Harbourmaster's offices competent for assessing the hazard, for issuing orders for compulsory WR and for running the administrative law procedure related to the WR (MC art. 840.j – 840.n, 840.s and 840.š )
- The administrative courts are competent to decide on the legality of the respective administrative acts upon lawsuits filed by the interested parties
- **Scenario A.** An order for CWR issued to the **owner** of the wreck
- **Scenario B.** An order for CWR issued to certain publically authorised bodies (*ex officio* WR):
  - (a) the port authority operating the port open for public traffic in which the wreck is located
  - (b) the concessionaire operating the special purpose port (nautical tourism port, sports port, industrial port, shipbuilding port, fishing port etc.) in which the wreck is located
  - (c) the Plovput Company Ltd. Split , as a legal entity with public authority in the field of the safety of navigation, responsible for the maintenance of the maritime waterways, if the wreck is located at sea outside the port area
  - (d) the competent county, if the wreck is located in the land area of the maritime domain outside the port area
- **the funds** are to be provided by the respective body authorized for the *ex officio* removal,
- except in the case of the Plovput Company Ltd.: the funds are provided in the state budget
- without prejudice to the owner's liability for all the costs of compulsory wreck removal

# Authority and procedure

## Croatia (ctd.)

- compulsory wreck removal: administrative law procedure consisting of the **reporting** (MC 840.k (1) and (2) - WRC art. 5), **locating** (MC art. 840.lj - WRC art. 7), **marking** (MC art. 840.m - WRC art. 8) and **removal** (MC art. 840.n - WRC art. 9) of the hazardous wreck
- Non-compliance with the provisions on reporting and removing the wrecks constitutes maritime offences punishable by pecuniary fines
- Removal is any form of prevention, mitigation or elimination of the hazard created by a wreck, and it may include the sale of the wreck by public auction (MC art. 840.a (6) - WRC art. 1.7.) – no absolute presumption of full removal
- Scenario A. (MC art. 840.n (1) – (5))
  - HMO orders WR to the owner of the wreck, determines the deadline and conditions of removal (safety and environmental protection)
  - The owner provides evidence of mandatory insurance
  - The owner proceeds with the removal (he may contract with any person to remove the wreck on his behalf)
  - The HMO may intervene only to the extent necessary to ensure that the removal proceeds effectively in a manner that is safe and protects the marine environment

# Authority and procedure

## Croatia (ctd.)

- Scenario B.1. (MC art. 840.n (7)) – *ex officio* WR
  - The owner does not remove the wreck within the given deadline
  - HMO may order the authorised body to remove the wreck at the expense and risk of the owner in the most efficient and expeditious manner possible, including the possibility of its sale by public auction, taking into account the safety and protection of the marine environment
- Scenario B.2. (MC art. 840.n (6)) – *ex officio* WR
  - In circumstances requiring urgent action when the hazard becomes particularly serious,
  - HMO issues an order requiring the authorised body to intervene immediately at the owner's expense and risk, by removing the wreck in the most efficient and expeditious manner possible, including the possibility of its sale by public auction, taking into consideration the safety and protection of the marine environment

# Authority and procedure

## **Croatia (ctd.)**

- Whenever the HMO proceeds with ex officio wreck removal it must notify the owner about it using the contact details provided in the master's or operator's report of the wreck (MC art. 840.n (8)).
- All administrative acts and notifications issued by the HMO shall be served on the owner by publication on the website of the Ministry of the sea, transport and infrastructure and in accordance with the rules on public announcement pursuant to the provisions of the law governing the administrative procedure (MC art. 840.n (12)).

# Authority and procedure

## Italy

- The Maritime Authority competent to deal with the compulsory wreck removal: **the Corps of the Port Captancies (the Coastguard)** operating under the auspices of the Ministry of infrastructure and sustainable mobility
- Territorial jurisdiction of the Maritime Authority (CPC):
  - The coast is divided into maritime zones - under the jurisdiction of the maritime directorates (*direzioni marittime*)
  - Maritime zones are divided into maritime compartments – under the jurisdiction of harbourmaster's offices (*capitanerie di porto*)
  - Compartments are divided into maritime districts – under the jurisdiction of the district offices (*uffici circondariali marittimi*)
  - In major terminals where neither harbourmasters' offices nor maritime district offices have their headquarters, the local maritime offices (*uffici locali marittimi*) or beach delegations (*delegazioni di spiaggia*) dependent on the district office are established.

# Authority and procedure

## Italy

- NC art. 72, RENC art. 89 – removal of submerged **goods or materials**:
  - In the case of submersion of goods or other materials in ports, bays, canals, the interested parties must provide for immediate removal.
  - The removal must commence and be completed within the terms set by the harbourmaster, or, in the absence thereof, completed by forty-eight hours from the submersion.
  - If the interested parties fail to comply with this obligation and in the opinion of the Maritime Authority, a danger or an obstruction to navigation may arise from the fact, the harbourmaster can arrange for the removal and, where appropriate, the sale of the aforementioned materials for the account of the State.
  - The interested party is required to pay to the State the costs incurred, or the difference between these and the proceeds from the sale.

# Authority and procedure

## Italy

- NC art. 73, RENC art. 90 – removal of a submerged **ship or aircraft**:
  - In the case of submersion of ships or aircraft in ports, bays, canals, or in the territorial sea in which, in the opinion of the Maritime Authority, a danger or an obstacle to navigation may arise, the harbourmaster orders the owner to provide for the removal of the wreck at his own expense, setting the deadline for the fulfillment of the order.
  - The order for the removal is issued to the owner in writing and notified by a representative of the Corps of Port Captaincies. The deadline is set by the Maritime Authority and where necessary, in consultation with the competent provincial infrastructure department.
  - If the owner is unknown, the order shall be communicated by means of a notice posted in the HMO, where it remains until the expiry of the deadline for the fulfillment of the order.
  - In the case of a foreign ship or aircraft, the notice is communicated to the consul of the State of registration , or, if the nationality is not known, with the Ministry of infrastructure and sustainable mobility.
  - If the owner does not comply with the order within the set deadline, the Maritime Authority will officially arrange for the removal and sale of the wrecks for the account of the State.
  - In cases of urgency, the Maritime Authority can provide for *WR ex officio*, on behalf and at the expense of the owner. The notice is to be given to the interested parties of the commencement of the removal operations in the forms provided for the notice of the WR order.
  - In all cases of ex officio WR, if necessary the competent provincial infrastructure department shall be consulted prior to the measures being taken.



# Liability and insurance

## Croatia

- MC art. 840.nj – WRC art. 10, 11
- strict liability of the owner of the wreck for the costs of locating, marking and removing the wreck,
- unless he proves that the maritime casualty that caused the wreck:
  - (a) resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible character;
  - (b) was wholly caused by an act or omission done with intent to cause damage by a third party; or
  - (c) was wholly caused by the negligence or other wrongful act of the public authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.
- No liability for the cost of compulsory wreck removal measures which are not proportionate to the hazard or if the measures exceed what is reasonably necessary to eliminate the hazard (the burden of proof is on the owner/insurer claiming it).

# Liability and insurance

## **Croatia (ctd.)**

- The liability of the owner for the costs of wreck removal is unlimited (MC art. 389 (1) (d))
- Croatia is a party to the 1976 Convention on Limitation of Liability for Maritime Claims (LLMC) as amended by the 1996 Protocol.
- Upon acceding to the 1996 LLMC Protocol, Croatia made a reservation: to exclude the application of the limitation of liability regime to claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and to claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship (LLMC 1976/1996, art. 18.1., 2.1.d) and e)).

# Liability and insurance

## Croatia (ctd.)

- Mandatory insurance for vessels/floating objects of 300 GRT or more covering the owner's liability for the WR costs – applies to the vessels/FO registered in Croatia and those entering Croatian ports or calling at Croatian offshore facilities; certificate of insurance; (MC art. 840.p, 62 (7) and (8) – WRC art. 12)
- minimum insurance limits: correspond to the limits of liability prescribed in MC art. 391 (1) (2) = LLMC 1976/1996 as amended in 2012 art. 6 (1) (b) of the LLMC
- i.e. the limit of liability for property claims for ships not exceeding 2,000 gross tonnage is 1.51 million SDR; for larger ships, in addition thereto:
  - For each ton from 2,001 to 30,000 tons, 604 SDR
  - For each ton from 30,001 to 70,000 tons, 453 SDR
  - For each ton in excess of 70,000 tons, 302 SDR.
- Non-compliance with the mandatory insurance requirements constitutes a maritime offence punishable by a pecuniary fine;

# Liability and insurance

## Croatia (ctd.)

- Direct action against the insurer (MC art. 840.p and 840.r – WRC art. 12.10.)
- the insurer may invoke the defenses that the owner would have been entitled to invoke (except bankruptcy or winding up of the owner),
- the insurer may not rely on the defenses which he might have been entitled to invoke against the owner as insured (contractual defenses)
- however, the insurer may invoke the defense of willful misconduct of the insured owner
- the insurer may rely on limitation of the shipowner's liability under any applicable national or international regime
- even if the owner is not entitled to limit liability , the insurer may limit liability to an amount equal to the limit of insurance
- the insurer is also entitled to set up a limitation fund
- the insurer shall in any event have the right to require the registered owner to be joined in the proceedings.

# Liability and insurance

## Italy (ctd.)

### Persons liable

- Art. 72 – removal of submerged goods/materials – the interested parties:
  - The NC does not specify who they are; the term refers to all persons with a direct interest in the goods/materials (the interest to preserve/recover them)
  - They may be various (owner, sender/shipper/ consignor, receiver/consignee, any person who has contractual liability for the custody/management of the thing, incl. carrier, stivadore, warehouse...)
- Art. 73. – removal of a submerged ship/aircraft – the owner

# Liability and insurance

## Italy (ctd.)

- Strict civil liability for the costs of *ex officio* compulsory wreck removal (NC art. 72, 73)
- Limited liability of the owner of the submerged vessel/FF :
  - Italy is not yet a party to the LLMC 1976/1996 but it implements some of its provisions in its national law by virtue of Legislative Decree n. 111 of 28 June 2012 which transposes the Directive 2009/20/EC of 23 April 2009 on the insurance of shipowners for maritime claims into Italian law
  - the national regime of limitation of shipowner's liability correspondent to that of the LLMC 1976/1996 (2012 amendments of limits are not implemented) applies to the vessels of 300 GRT and more
  - The vessels whose GRT is below 300 are subject to the limitation regime of NC art. 275: the owner may limit his liability for maritime claims to the sum equal to the value of the ship and the amount of the freight and any other income from the voyage.

# Liability and insurance

## Italy (ctd.)

- The owner of the submerged vessel may limit his liability for the costs of compulsory wreck removal (NC art. 73):
  - In case of a ship of GRT 300 and more the liability limits correspond to those of LLMC 1976/1996 (2012 amendments not taken into account) for the property claims (LLMC art.6 (1) (b))
  - For the ships of GRT not exceeding 300, the owner is required to pay the costs of removal only within the limits of the value of the wreck.

# Real rights on the wreck /security for the claims for the costs of compulsory WR

## Croatia

- in case of *ex officio* compulsory wreck removal, a lien is created *ex lege* on the wreck as a security for the claim against the owner who remains fully liable for the wreck removal costs (MC art. 840.u (1))
- the claim against the owner for wreck removal costs is additionally secured by the creditor's right of retention over the removed wreck
- the creditors (the State/publicly authorised body performing the WR) are entitled to settle their claims from the purchase price of the wreck, by sale at public auction or judicial sale (MC art. 840.u (3))
- the claims for *ex officio* wreck removal costs rank higher than all other claims secured by maritime privileges and hypothecs
- additional security for the wreck removal cases where the provisions on mandatory liability insurance do not apply (e.g. vessels below 300 GT), or where mandatory insurance is not available or sufficient



# Real rights on the wreck / security for the claims for the costs of compulsory WR

## Italy

- Art 72 – removal of goods and materials:
  - compulsory wreck removal when undertaken ex officio may entail where appropriate, the sale of the goods/materials for the account of the State.
  - The interested party is required to pay to the State the costs incurred, or the difference between these and the proceeds from the sale.
- Art. 73 – removal of ship/aircraft:
  - Ex officio WR may entail the sale of the ship/aircraft for the account of the State
  - For ships of GRT 300 and more, if the proceeds from the sale are not sufficient to cover the costs, the owner is obliged to pay the difference to the State but only up to the amount of the limit of liability.
  - If the proceeds of the sale exceed the expenses incurred, the privileged creditors or mortgagees on the ship can claim the difference.
  - For ships of GRT below 300, the owner is required to pay the costs of removal only within the limits of the value of the wreck

# Real rights on the wreck / security for the claims for the costs of compulsory WR

## **Italy (ctd.)**

### RENC Art. 91 - Removal by private persons

- In the case of the removal by the owners, the objects removed remain in the custody of the Maritime Authority to guarantee the fulfilment of the obligation of the total removal. The owners cannot collect the removed things until the end of the operations, unless they provide a suitable financial deposit.
- Upon collection of the removed goods, the owners are required to pay the custody costs.
- The Maritime Authority will not deliver the removed items unless the owner proves to have paid the outstanding customs duties, if any.

# Real rights on the wreck / security for the claims for the costs of compulsory WR

## Italy (ctd.)

RENC Art. 92 – ex officio removal

- In case of ex officio removal the objects removed become the property of the State.
- In cases of urgency, the Maritime Authority may negotiate private sale of the removed objects. The sale is confirmed by a report, indicating the price obtained, the expenses incurred and, where applicable, the difference to be paid by the owners.
- The Maritime Authority does not proceed with the delivery of the removed objects if the buyer does not prove that he has paid the outstanding customs duties, if any.

# Real rights on the wreck / security for the claims for the costs of compulsory WR

## Italy (ctd.)

- NC art. 84 - **Injunction for reimbursement of expenses** of *ex officio* compulsory WR incurred on behalf of the owner/the interested parties – the Maritime Authority's injunction made enforceable by an order of the competent civil court of 1st instance
- After twenty days from the notification of the injunction to the debtor, the Maritime Authority can proceed with the enforcement.

Thank you for the attention...

Questions or comments?