

Inter-Ministerial Decree of 7 April 2020

(translation^(*))

The Minister for the Infrastructure and Transport,
in cooperation with
The Minister for Foreign Affairs and International Cooperation,
The Minister for Home Affairs,
and
The Minister for Health,

having seen the European Convention on Human Rights and Fundamental Freedoms (1950);

having seen the Geneva Convention (1951) on the Status of Refugees;

having seen the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, and, particularly, Article 19 thereof⁽¹⁾;

having seen Article 83 of the Italian Code of Navigation⁽²⁾;

having seen the Unified Text of the Italian Health Legislation (Royal Decree 27 July 1934, No. 1265);

having seen the Law of 23 December 1978, No. 833, establishing the Italian National Health Service;

having seen the Decree of the President of the Republic No. 232 of 4 April 2001, bearing the Rules concerning the licensing of ships for free use;

having seen the decision by the Italian Council of Ministers adopted at its meeting of 31 January 2020, concerning the declaration, for a period of six months, of the state of emergency in the national territory, as a consequence of the health hazard related to the spreading of disease caused by transmissible viruses;

(*) This entirely unofficial translation, personally made by Prof. F. Marongiu Buonaiuti, Department of Law, University of Macerata, is intended for the exclusive use of the students following his on-line classes of Migration Law at the said Department, pending the suspension of teaching activities in presence due to the current COVID-19 emergency.

⁽¹⁾ United Nations Convention on the Law of the Sea (UNCLOS), Article 19 – Meaning of innocent passage:

1. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with this Convention and with other rules of international law.
2. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities: (...)

(g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State; (...).

⁽²⁾ Italian Code of Navigation, Article 83 – Interdiction of passage and stationing: The Minister for Transport and Navigation may restrict or forbid the passage or stationing of merchant ships in the territorial sea, for reasons of public policy, of safety of the navigation, and, in cooperation with the Minister for the Environment, for reasons of protection of the marine environment, identifying the areas to which the interdiction applies. – Article so replaced pursuant to Article 5, Law of 7 March 2001, No. 51 (our translation).

having seen the Decree-Law of 23 February 2020, No. 6, bearing “Urgent measures concerning the containing and handling of the ephydemiological emergency caused by COVID-19”, converted, with amendments, into Law 5 March 2020, No. 13;

having seen the Decree-Law of 25 March 2020, No. 19, bearing “Urgent measures intended to counter the ephydemiological emergency caused by COVID-19”;

having seen the restrictions, suspensions and limitations introduced, for the purposes of protecting public health, by the Decrees of the President of the Council of Ministers of 8, 9, 11 and 22 March 2020, as measures intended for the containing and handling of the ephydemiological emergency caused by COVID-19;

having seen Article 1, point 5, of the Decree of the President of the Council of Ministers 11 March 2020, establishing that the Minister for the Infrastructure, in cooperation with the Minister for Health, may order, for the purposes of containing the Coronavirus emergency, the rescheduling, reduction and suspension of inter-regional services of transport, by road, rail, air, and sea, in due consideration of the effective needs and in order to guarantee minimum essential services;

having noted that, by Declaration of 30 January 2020, the World Health Organization (WHO-OMS) declared that the COVID-19 ephydemia constitutes a health emergency of global interest and, on 11 March 2020, the same UN Health Agency declared that the spreading of the SARS-CoV-2 virus, as the relevant pathogenic agent, has a pandemic spreading, so that its presence cannot be excluded in any continent or geographical area of the world;

having seen the order of 28 March 2020 by the Minister for Health, in cooperation with the Minister for the Infrastructure and Transport, bearing “Further urgent measures intended for the containing and handling of the ephydemiological emergency caused by COVID-19”;

having seen the Decree by the Minister for the Infrastructure and Transport, in cooperation with the Minister for Health, No. 120 of 17 March 2020, regulating, among others, the entry of persons in Italy, and the relevant provisions in order to prevent the spreading and contagion from COVID-19;

having seen the Decree by the Minister for the Infrastructure and Transport, in cooperation with the Minister for Health, No. 145 of 3 April 2020, introducing further rules concerning the entry of persons in Italy, and the relevant provisions in order to prevent the spreading and contagion from COVID-19;

having seen the Guidelines on the Treatment of Persons Rescued at Sea adopted by the Maritime Safety Committee (of the International Maritime Organization – IMO), providing that the State responsible for the SAR (Search And Rescue) Area where the surviving persons have been rescued shall bear the responsibility to provide a “place of safety” (POS) where these may be disembarked;

taking into account that, in consideration of the emergency situation related to the spreading of Coronavirus and of the current critical situation of Italian Regional Health Services, and of the exceptional task being faced by medical doctors and all health staff for the purposes of providing assistance to COVID-19 patients, for the time being it is not possible to ensure in the Italian territory the availability of such “places of safety” (POS), without at the same time compromising the ability of the national health infrastructure, as well as of the other agencies involved, to contain the spreading of contagion and provide assistance and care to COVID-19 patients;

considering that persons eventually rescued (that is, admitted to disembark in the Italian territory), among whom there might not be excluded the presence of cases of contagion from COVID-19, shall

be guaranteed as to the absence of threats for their life, and shall be provided the means for satisfying their primary needs, as well as the access to basic services in terms of health, lodging and transport;

considering it necessary to put into effect any necessary initiative, taking into account also the significant commitment of the police forces to patrolling the territory, in order to guarantee the respect for the provisions adopted concerning the current health emergency, as well as in order to guarantee the effectiveness of the measures of containment of the spreading of the disease so far adopted;

considering it necessary, in order to counter the spreading of the ephydemiological emergency caused by COVID-19, also in consideration of the mentioned state of pandemics, to adopt exceptional measures of prevention of the risk of contagion with regard to rescue operations carried out by ships flying a foreign flag, having carried out such operations outside the Italian SAR (Search And Rescue) Area, without coordination by the IMRCC (Italian Maritime Rescue Coordination Centre) located in Rome;

having considered that the care and rescue activities to be provided at the “place of safety” (POS) may be made available by the country whose flag is flied by the ships involved in the rescue, where these have performed the rescue operations outside the Italian SAR (Search And Rescue) Area, without coordination by the IMRCC (Italian Maritime Rescue Coordination Centre) located in Rome,

ORDERS:

Article 1

(Scope of application)

1. For the entire period of duration of the national health emergency related to the spreading of the COVID-19 virus, Italian ports do not ensure the fulfilment of the requirements contemplated under the definition of “Place of Safety” (POS), as provided under the Hamburg Convention on Search and Rescue at Sea (SAR Convention), as concerns rescue operations performed by ships flying a foreing flag outside the Italian SAR (Search And Rescue) Area.

Article 2

(General rules)

1. The provisions contained in this decree shall produce effect from the date of its adoption and for the duration of the health emergency period, as from the decision by the Council of Ministers of 31 January 2020.

THE MINISTER FOR THE INFRASTRUCTURE AND TRANSPORT

THE MINISTER FOR FOREIGN AFFAIRS AND INTERNATIONAL COOPERATION

THE MINISTER FOR HOME AFFAIRS

THE MINISTER FOR HEALTH