**CMI Questionnaire on Domestic Legislation for Electronic Bills of Lading**

**Responses by Italian Maritime Law Association**

Part I: Questions for all jurisdictions.

Part II: Questions for those jurisdictions that already have legislation that regulates electronic bills of lading.

Part III: Questions for those jurisdictions that plan to enact legislation that regulates electronic bills of lading.

Section IV: Questions for those jurisdictions that neither have nor plan to enact legislation that regulates electronic bills of lading.

**I**

**I.1** **Are electronic bills of lading already used in practice in your jurisdiction?**

The largest container carriers operating (also) in Italy – MSC, Hapag Lloyd, ZIM, Evergreen, Yang Min, Maersk Line – make use of platform systems approved by the International Group of P&I Clubs that, presently, is the only existing body capable to give a standard for a paperless system of production of bills of lading. It is worth mentioning that such approval is given when the electronic bills of lading fulfill all the three functions of the traditional paper bill of lading and, in particular, the transfer of title, rights and liabilities.

The Italian legislator, so far, has not followed this commercial trend and has not enacted a law having as its scope the regulation of the electronic bills of lading. Handholds of general discipline of some aspects of the subject matter can be found – inter alia – in the Presidential Decree 28 December 2000 n° 445 (as amended by the Presidential Decree 7 April 2003 n° 137) allowing the “digital signature” as well as in the Legislative Decree 9 April 2003 n° 70 (adopting the EC Directive 2003/31/EC on electronic commerce) and, more recently, in the Law Decree 14 December 2018 n° 135 on smart contracts. Mention has to be made also to other two instruments that, even if introduced by the Italian Government for organizing the use of digital technologies within the Administration and between the Administration and the citizens, have had an impact also on the private sector: *(a)* the Code of Digital Administration (enacted by Law Decree 7 March 2005 n° 82) and *(b)* the Agency for Digital Italy (set up by Legislative Decree 22 June 2012 n° 83).

**I.2 If the answer to I.1 is Yes, which platforms are frequently used (BOLERO, essDOCs, WAVE, etc.)?**

The initial platforms like Bolero and essDOCS (providing the title transfers through central registers) are in the process of being replaced by the second generation of electronic trading systems like WAVE and BlueX (adopting the blockchain technology).

**I.3 If the answer to I.1 is No, do you think current or future legislation on electronic bills of lading will or would change the situation?**

The Italian future domestic legislation (if and when enacted) from one side, will have to consider the operational practice existing in the relevant market by all the players (not only B2B but also B2G) and, from another side, will have to adopt the guidelines as emerged in the international legal instruments like the 1990 CMI Rules on Electronic Bills of Lading, the 1996 UNCITRAL Model Law on Electronic Commerce, the 2001 UNCITRAL Model Law on Electronic Signatures, the 2009 Rotterdam Rules and the 2017 UNCITRAL Model Law on Electronic Transferable Records.

**I.4 Are transport documents other than bills of lading or their electronic version used in practice in your jurisdiction?**

Yes.

**1.5 If the answer to I.4 is Yes, what kind of documents (including electronic version) are used?**

Express bills of lading and waybills (air). The electronic version of domestic road transport documents (DDT and CMR) is under consideration, but it does not result that these instruments are actually used in Italy.

**1.6 Do you think current or future legislation on electronic bills of lading will or would change the situation? For example, if (paper) bills of lading are currently not often used, would the situation be changed by the possible legislation on electronic bills of lading?**

Yes, they could speed up and simplify the transmission of bills of lading and facilitate their negotiation provided that technical neutrality and interoperability will exist among the various competitive platforms. Giving as granted that blockchain assures reliable protection of the records against frauds and cyber risks.

**II.**

***If your jurisdiction already has legislation that enables the use of electronic bills of lading, please answer the following questions.***

THIS PART IS UNANSWERED BECAUSE ITALY HAS NO LEGISLATION THAT ENABLES THE USE ELECTRONIC BILLS OF LADING.

**II.1 Please specify the legislation. (Name of the statute, official or unofficial citations, paragraph or article numbers, year of enactment/implementation, etc.)**

**II.2 (a) Is the legislation referred to in II.1 based on the UNCITRAL Model Law on Electronic Transferable Records (MLETR)?**

**(b) If the answer to question (a) is Yes, is it a simple adoption of the MLETR or are there changes or additions to it? If there are changes or additions, please specify them (including the reason for the changes or additions, if possible).**

**(c) If the answer to question (a) is No, please describe the legislation. Is there any other basis for the legislation? Why did your jurisdiction not follow the MLETR?**

**II.3 Does the legislation referred to in II.1 cover only bills of lading (or similar documents of title) or does it also cover other documents?**

**II.4 Does the legislation referred to in II.1 provide the standard of reliability of the system? *See* Article 12 of the MLETR.**

**I1.5 Does the legislation referred to in II.1 specify the requirements for the use of electronic bills of lading? If yes, please identify those requirements (e.g., consent of the parties).**

**I1.6 Does the legislation referred to in II.1 specify the rights of the holder of electronic bills of lading or the effect of transferring them? If the answer is Yes, do such provisions address specific legal situations or generally declare that the rights or effects are the same as in the case of paper bills of lading?**

**I1.7 Does the legislation referred to in II.1 provide the requirements for transferring electronic bills of lading (e.g., the method of electronic “endorsement”, etc.)? If yes, please specify the requirements.**

**I1.8 Does the legislation referred to in II.1 distinguish between paper and electronic bills of lading? If yes, please specify how they are treated differently. *See* Article 36(2)(d) of the Rotterdam Rules**

**I1.9 Does the legislation referred to in I.1 include provisions on scope of application? For example, does it apply to an electronic bill of lading issued by agreement between a carrier and shipper in a foreign jurisdiction that uses a platform specifying foreign law as the governing law?**

**III.**

***If your jurisdiction plans to enact legislation that enables the use of electronic bills of lading, please answer the following questions.***

THIS PART IS UNANSWERED BECAUSE ITALY, AT THE PRESENT STAGE, DOES NOT PLAN TO ENACT LEGISLATION THAT ENABLES THE USE ELECTRONIC BILLS OF LADING.

**III.1 Please specify the nature of the prospective legislation. For example, does it cover all kinds of electronic documents or digital assets or only electronic bills of lading (or similar documents of title)?**

**III.2(a) Is the prospective legislation referred to in III.1 based on the UNCITRAL Model Law on Electronic Transferable Records (MLETR) or the principles thereof?**

**(b) If the answer to question (a) is Yes, will it be a simple adoption of the MLETR, or will there be changes or additions to it? If there will be changes or additions, please specify them (including the reason for the changes or additions, if possible).**

**(c) If the answer to question (a) is No, please describe the prospective legislation. Will there be any other basis for the legislation? Why is your jurisdiction not following the MLETR?**

**III.3 Is the prospective legislation referred to in III.1 expected to cover only bills of lading (or similar documents of title) or also other documents?**

**III.4 Is the prospective legislation referred to in III.1 expected to provide the standard of reliability of the system? *See* Article 12 of the MLETR.**

**I1I.5 Is the prospective legislation referred to in III.1 expected to specify the requirements for the use of electronic bills of lading? If yes, please identify those requirements (e.g., the consent of parties etc.)**

**II1.6 Is the prospective legislation referred to in III.1 expected to specify the rights of the holder** **of electronic bills of lading or the effect of transferring them? If the answer is Yes, will such provisions address specific legal situations or generally declare that the rights and effects are the same as in the case of paper bills of lading?**

**I1I.7 Is the prospective legislation referred to in III.1 expected to specify the requirements for transferring electronic bills of lading (e.g., the method of electronic “endorsement”, etc.)? If yes, please identify the requirements.**

**I1I.8 Is the prospective legislation referred to in III.1expected to distinguish between paper and electronic bills of lading? If yes, please specify how they will be treated differently. *See Article 36(2)(d) of the Rotterdam Rules***

**1II.9 Is the prospective legislation referred to in III.1 expected to include provisions on scope of application? For example, will it apply to an electronic bill of lading issued by agreement between a carrier and shipper in a foreign jurisdiction that uses a platform specifying foreign law as the governing law?**

**IV.**

***If your jurisdiction neither has nor plans to enact legislation that enables the use of electronic bills of lading, please answer the following questions.***

**IV.1 Would there be any benefit to having legislation that enables the use of electronic bills of lading? Is the use of electronic bills of lading possible even without any legislation?**

In the absence of an international legal source giving international uniformity, it would be beneficial if the legislations of the single states will not be too different. This seems possible because the classic e-commerce principles have been adopted by many countries. If no legislation(s) is (are) enacted, the use of the electronic bills of lading is left to the market.

**IV.2 Is there any obstacle to enacting legislation that enables the use of electronic bills of lading?**

Electronic bills of lading, at the present stage, are instruments of the party autonomy. Therefore, possible obstacles may be envisaged in their – not entire – acceptance by the public authorities having to deal with them.

Moreover, there could be limitations in the trade with some countries that are reluctant to change their legislation still deeply rooted in the concept of paper bills of lading.

Finally – it would seem a paradox but is the reality – the ITC solutions are evolving so rapidly that the legislation, for its own nature, struggles to keep pace with them.

Genoa, 27 September 2022