

## TRANSPORT, LOGISTICS AND FORWARDING: IMPORTANT CHANGES TO THE CIVIL CODE REGULATIONS

The conversion into law (no. 233 of 29 December 2021) of Decree-Law 152/2021, implementing the Italian National Recovery and Resilience Plan (PNRR), definitively concluded the process of revising certain provisions of the Italian Civil Code concerning transport and shipping contracts.

The legislator's aim was to

- "modernise" the system of carrier liability in the case of freight, and to
- adapt the provisions of the Italian Civil Code to the major international legal trends, especially with reference to the cases of multimodal transport and shipping.

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The main changes introduced by this reform consist in the revision of the following articles of the Italian Civil Code:

### **Article 1696**

With reference to the limitation of the carrier's compensation for loss of, or damage to, transported goods, two important provisions have been introduced:

- in paragraph 2, a reference is made to the application of the national and/or international legislation applicable from time to time, with respect to the specific transportation mode used (road, air, sea and rail), where a limitation to the compensation of damages by the carrier has been provided;
- paragraph 3 finally rules the case of the so-called multimodal transport, *i.e.* transport carried out by means of different transportation modes. In particular, it is now provided that, if it is not possible to identify in which phase of the carriage the damage occurred, the compensation due by the carrier is equal to: (i) in case of national carriage, Euro 1 per kilogram of the goods lost, and (ii) in case of international carriage the limitation of the compensation is equal to Euro 3 per kilogram.

### **Article 1737**

The former wording of this article has been replaced by a provision stating that the freight forwarder is under the obligation to conclude, in its own name and on behalf of its principal, if it has powers of representation, one or more transport contracts, including with several carriers, and to perform any ancillary operation to the principal obligation.

### **Article 1739**

The provision on the freight forwarder's obligations has been modified so as to introduce a general undertaking to follow the instructions of the principal (thus any reference to specific elements such as the choice of the route, the vehicle or the transport modes, has been deleted) and to state that the freight forwarder is under no obligation to insure the shipped goods, unless otherwise indicated by the principal (and no longer subject to contrary usage as in the previous version).

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## Article 1741

With regard to the recognition of the carrier's liability in respect of the freight forwarder who undertakes to transport with its own or other people's vehicle, an express reference to the application of the provisions of the above mentioned Article 1696 of the Italian Civil Code, concerning the limitation of liability for loss or damage to the transported goods, has been included.

## Article 2761

The new provisions introduced by this article are of particular relevance in practice as it expressly recognises the privileged nature of claims arising from the contract of carriage, freight, the agent as well as the custodian or bailee of the goods. It is further provided that the privilege granted to the secured creditor may be exercised over the transported or shipped goods until they remain in its possession, and also over the goods subject to transport, other than those for which the claim arose, provided that such transport is part of a single framework agreement with the same principal. Furthermore, the reference to the privileged nature of the tax expenses advanced by the carrier or the freight forwarder and of the expenses related to the payment of customs duties advanced by the agent on behalf of the principal has been expressly included.

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In addition to the important amendments to the Italian Civil Code, the hereby commented provision contains important measures - including of economic nature - aimed at accelerating the development and the strengthening of the so-called '*Platform for the management of the national logistics network*', also by assigning to the Ministry of Infrastructure and Sustainable Mobility of the responsibility for implementing the project. Strategic importance is therefore given to the software and IT part of the logistics supply chain, in line with recent market trends.

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The Shipping, Aviation and Transportation Department of Legance is available to provide any clarifications, also in respect of any specific situation which may be of interest to you.

For further information:

**Claudia Gregori**

**Partner**

T. +39 02.89.63.071

[cgregori@legance.it](mailto:cgregori@legance.it)

**Iacopo Fontana**

**Partner**

T. +39 02.89.63.071

[ifontana@legance.it](mailto:ifontana@legance.it)

**Marco Cottone**

**Managing Associate**

T. +39 02.89.63.071

[mcottone@legance.it](mailto:mcottone@legance.it)

or your direct contact at Legance.

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