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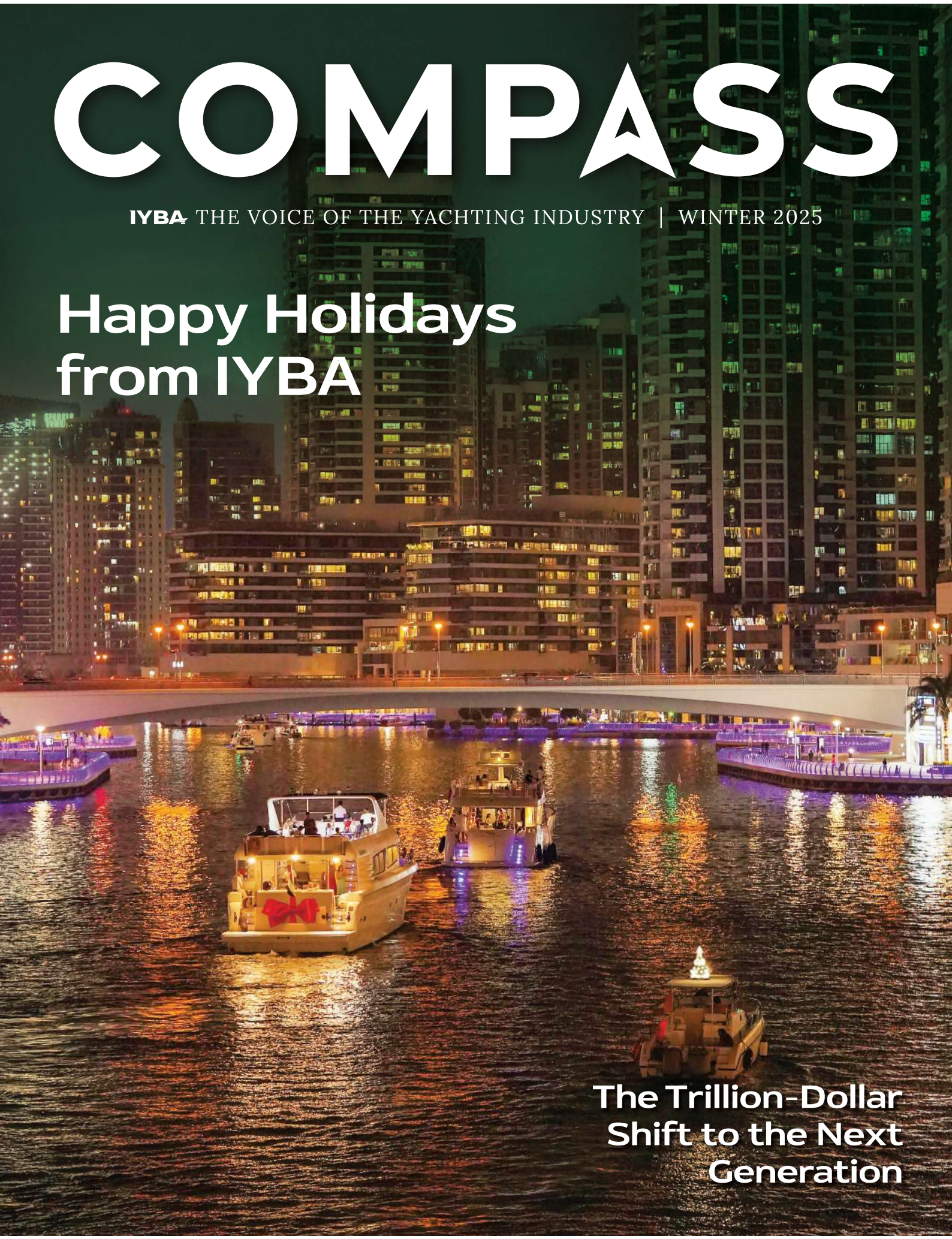

The Trillion-Dollar Shift to the Next Generation

THE EU'S TEMPORARY ADMISSION REGIME, SMUGGLING AND CONFISCATION - WHAT YOU NEED TO KNOW

by **Dr. Ezio Vannucci** & **Dr. Andrea Barabino,** *Moores Rowland Partners*

Non-EU flagged yachts may sail in Italian and EU territorial waters under the special customs regime of "*temporary admission*", provided that the conditions and limits of this regime are respected.

The Temporary Admission regime, governed by Article 250 of EU Regulation 952/2013 (UCC-New Customs Code of the Union), allows the temporary use in the EU territory, with total or partial exemption from import duties and VAT, of non-EU goods intended to be re-exported or placed under another customs procedure without having undergone any changes, except for their natural depreciation due to use.

In the case of a yacht, the temporary admission procedure may be used provided that:

- The yacht is registered outside the EU in the name of a person (natural or legal) established outside that territory. If the registration is in the name of a legal person, this condition must also be met by the directors and the ultimate beneficial owner (UBO);
- They are used by a person established outside the EU (as principal user).

Means of transport benefit from a particular simplification of the regime examined here, whereby, in accordance with Article 141(1)(d) of the Commission Delegated Regulation 2446/2015, the mere crossing of the border determines the asset's subjection to the Temporary Admission regime.

In the case of a yacht, as confirmed by the recent Circular no. 8/2025 of the Italian Customs Agency (ADM), entry into the territorial waters of an EU Member State (those within 12 miles of

the coast) is, in principle, sufficient to bind the asset to that regime. However, it is useful to opt for a verbal declaration of entry into the regime, by submitting a specific form (Annex 71-01 Delegated Regulation), in accordance with Delegated Regulation Article 165, in order to certify the date of arrival of the vessel in EU territory for the purposes of compliance with the maximum terms for the discharge.

In our case, therefore, entry into the territorial waters of an EU Member State is, in principle and provided that the above conditions are met, sufficient to bind the goods to that regime.


Superyacht in Portofino, Italy

18-month time limit

The temporary admission of vessels under private use allows, pursuant to Article 217(e) of the Commission Delegated Regulation, the use of the yacht within the EU for a maximum period of 18 months (clearance period). It should be noted that, following the ruling of the Court of Justice of the European Union C-781/2023 of December 12, 2024, it is possible to request an extension of the time-limit of discharge period of up to 24 months without the need for "exceptional circumstances."

If, within this 18-month time-limit discharge period, the private yacht is not transferred outside the EU or has not been placed under another customs procedure (e.g. inward processing), this constitutes a case of "smuggling", which in certain circumstances may also have criminal implications.

In the event of smuggling, import VAT is always due on the value of the yacht (in Italy the VAT standard rate is 22%), in addition to a penalty commensurate with the tax due. Italian legislation also provides that in the event of smuggling, the means of transport must be "confiscated", an action which is therefore added to the monetary penalties mentioned above.

Italian legislation provides that in the event of smuggling, the means of transport must be "confiscated".

However, in its recent ruling no. 93 of July 3, 2025, the Constitutional Court declared confiscation unlawful in cases where the taxes due and related penalties have been paid, considering that such cumulative penalties (monetary penalties and confiscation of assets) are disproportionate in cases where the operator has paid import VAT.

According to the Constitutional Court, the provision for confiscation in relation to disputes concerning import VAT, in addition to the administrative penalty, is not consistent with the penalty provided for in relation to domestic VAT.

For this reason, the Constitutional Court concluded by stating that, "*In the event that the perpetrator of the offence takes action to remedy the non-payment of import VAT by paying the evaded tax, the ancillary charges, including interest, and the financial penalty, the maintenance of the confiscation measure is in fact disproportionate, since the State has recovered the entire tax debt and therefore the guarantee function that can justify mandatory confiscation no longer applies.*"

The application of confiscation in addition to the administrative penalty would therefore constitute a violation of the principle of proportionality, resulting in an excessively punitive outcome for operators who have regularized their tax debts.

Operational clarifications

To date, the judges' decision already has prompted the Italian legislator to initiate a legislative review process aimed at bringing the set of rules on penalties for imports into line with the principles expressed by the Constitutional Court.

On July 14, 2025, the Italian Council of Ministers approved a corrective decree scheme which, by amending national customs regulations, would exclude the application of administrative confiscation in all cases where the operator pays customs duties, penalties and expenses incurred for the management of seized goods.

With the recent Circular No. 18 of 2025, the Italian Customs (ADM) also provided initial operational clarifications on the application of the principles established by the Court in cases of administrative confiscation, i.e., when the violation does not constitute a more serious criminal offense, issuing new instructions to its local offices. The Administration has established that in the event of a smuggling charge for failure to declare pursuant to Article 78 of Legislative Decree No. 141 of 2024 (a case that occurs, for example, when a yacht remains in temporary admission for more than 18 months without being bound to another customs regime or being re-exported), if the perpetrator of the violation pays the assessed VAT, in addition to penalties and interest, the Office must order the release of the yacht.

However, the circular does not seem to address cases where the violation constitutes a criminal offense due to exceeding the threshold of €100,000 in VAT, which, on the contrary, would not in principle be excluded from the Court's ruling.

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