

MINUTES OF THE DISCUSSIONS WITH DG TREN ON THE 5TH MARITIME CABOTAGE REPORT October 2009

The EU regulation N°3577/92 on maritime cabotage requires that the Commission shall publish reports on this issue every two years.

During 2009, the Commission therefore published its draft 5th Maritime Cabotage Report, and submitted it for preliminary consultation to a limited number of organisations including the CPMR (the others being the European Shipowners Association, the European Transport Workers Federation, the European Sea Ports Organisation and ESIN).

In response to this, the CPMR Islands Commission submitted a paper to the European Commission (DG TREN) focusing specifically on Island maritime transport, which was drawn up following a consultation with the Regions.

On 16 September 2009, a meeting was held in Brussels between the Executive Secretary of the Islands Commission and DG TREN, represented by Mr Theologitis, Head of Unit, Maritime Transport, and Mrs Warnel, policy officer.

This meeting took place in a most positive atmosphere and Mr Theologitis stated his keen interest in the paper submitted by the IC, particularly in the fact that it takes a pragmatic, and not dogmatic, approach. During this discussion, the following points were raised:

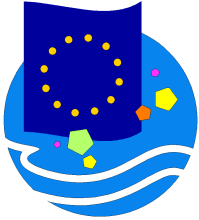
1) The 5th Maritime Cabotage Report should come out in the autumn, and be discussed within the various services of the Commission, in order to be published early next year. There appeared to be some consensus from all parties concerned not to question the basis of cabotage regulation, which now seems to be stabilised. To modify this in a significant way would be to risk opening up a Pandora's Box.

2) However, if it is unlikely that the regulation *stricto sensu* develops, a large margin exists through its interpretative communications¹. Needless to say, the regulation text is quite succinct, which leaves the Commission with considerable leeway through these instruments - within the limits of the aforementioned regulation, of course. For example, it is through such Communications that the Commission has authorised a simplified tendering process for public service contracts for small island connections (firstly <100,000 pax/year, then <300,000 pax/year).

¹ - Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions relating to the interpretation by the Commission of the EC regulation n° 3577/92 of the Council concerning the application of the principle of free circulation of the maritime transport services within the member states (maritime cabotage) COM(2003) 595 Final;

- Communication C (2004) 43 from the Commission. Community guidelines on State Aid for maritime transport (2004/C 13/03);

- Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions relating to the interpretation by the Commission of the EC regulation n° 3577/92 of the Council concerning the application of the principle of free circulation of the maritime transport services within the member states (maritime cabotage) COM(2006) 196 Final.



In this respect and in view of the seminar on transports that the IC is organising in Bornholm in February 2010 (and that DG TREN have declared their readiness to participate in), it was proposed that the Island Regions are asked beforehand to consider the modifications of the aforementioned interpretative Communications that they could end up requiring in order to discuss them with the Commission.

It is therefore important that the Island Regions begin working on this issue straight away.

3) A number of Island Regions have raised the complex and sometimes (in certain cases where the market is woefully inadequate for generating genuine competition) even futile nature of the tendering process at EU level which is envisaged in the framework of the PSC. Would it not be better to relax legislation? Mr Theologitis has declared he is open to discussions in order to find a pragmatic solution to this complex problem.

One issue which was raised – completely informally – during these debates was that of the increase in the threshold of 300,000 pax/year below which a simplified procedure could apply. The possibility of implementing a second, higher threshold was also raised, where the same simplified rules could be applied under certain conditions (such as a prior audit of the historical operator, supported by an assessment of the market capacities).

4°) In addition, DG TREN verbally confirmed that the conclusions of the ANAV ruling of the European Court of Justice would apply to Island maritime transport. Let us keep in mind that according to this ruling, if a certain number of circumstances were met, (such as the fact that the operator in question is owned entirely by the public authority and is acting under the direct orders of that authority), the tendering procedure would not be compulsory. We have however noted that the ANAV ruling refers to a road transport service, not Island maritime transport which comes under specific legislation. The informal comments from DG TREN should therefore be tested by a formal approach concerning a specific case.

5°) With regard to the application of PSOs or PSCs on connections between an Island and another EU country, DG TREN confirmed the legislation's development and stated it is not opposed to such initiatives.

The potential obstacle in this seems to be more related to the rules about the flags of the States concerned (each State can have specific rules regarding crews, the structure of ships etc, and these can prove controversial).

In addition, concerning Short Sea Shipping, it seems that the Commission is willing to accept its extension to connections between the OMR and third countries of their geographical areas.

6°) DG TREN thinks that the biannual publication of cabotage reports is no longer justified insofar as the legislation is well established. It appears that in the future, these reports will be published sporadically and whenever necessary, in the event of a major development.

DG TREN intends to continue its consultations with interested parties, such as the CRPM, but occasionally rather than permanently, and bilaterally rather than multilaterally.