



CPMR ISLANDS COMMISSION WORKSHOP ON TRANSPORT
18/19 February 2010
BORNHOLM, DANEMARK

CONCLUSIONS & RECOMMENDATIONS

Introduction

Organised jointly by Bornholm Regionskommune and by the CPMR Islands Commission, the workshop on island transport held in Bornholm on the 18/19 February 2010 has gathered representatives from 12 island regions¹, 3 national authorities², various organisations and shipping operators³ as well as the European Commission DG TREN.

Apart from a presentation of the recent evolution of air transport legislation, the workshop essentially focused on maritime transport issues, and in particular on the Commission's 5th Report on Maritime Cabotage. The situation of various island regarding maritime services was highlighted by presentations from the Azores, Balearic Islands, Corsica, Sardinia, Sweden and Scotland.

EU maritime cabotage legislation: an example of governance for the islands?

The EU's unofficial motto is "Unity in Diversity", and this expression seems to be tailor made to describe the condition of islands in general, and of island transport in particular.

Indeed, EU Islands present an extreme variety of situations when it come to the latter, ranging from access to small inshore islands, a few miles distant, to maritime routes to the Outermost Regions crossing a whole Ocean. The same diversity applies to the size of population serviced, the local weather conditions, the nature of traffic flows, etc.

As may be expected, transport problems vary in nature and in magnitude from one island to another, and even from one route to another, and so does the way they are dealt with, and the solutions which are found.

Thus, whilst the Balearics will complain of the insufficient level of competition, if not the

¹ Gotland, Bornholm, Saaremaa, Shetland, Comhairle nan Eilean Siar, Argyll & Bute, Azores, Balearics, Sardinia, Corse, Guadeloupe, Martinique.

² Denmark, Sweden, Ireland.

³ INSULEUR, Nordic Ferry Services, Caledonian MacBraynes.

existence of quasi-monopolies on some routes, Corsica will highlight some of the adverse effects of strong competition for the public purse. Bornholm will describe how the reshaping of its maritime services has led to the loss of 300 jobs, when the UK will highlight the safeguard measures existing in case of transfer of undertakings. Sardinia will explain that its strategy rests upon joint public/private partnerships, when Sweden will favour separate tendering for the provision of vessels and the provision of services...

As to who should oversee maritime services, solutions are equally diverse. For some, ferry services should be under the remit of national authorities, for others under regional ones. However, there are cases where one level of government wishes to take over more responsibilities, others where it does not, and cases where the matter is still being hotly debated.

Against this near infinite variety of situations lies the EU's "Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage)", of which roughly 300 words deal with the specific issue of Islands Cabotage, essentially to enable the imposition of Public Service Obligations (PSOs) or Public Service Contracts (PSCs) on island routes.

It is quite remarkable that this very succinct framework has, to this day, worked reasonably well to address such complex, diverse, and case-by-case issues as the provision of maritime services to island communities⁴. This is undoubtedly due to the fact that the Regulation has been applied with a certain degree of pragmatism and flexibility by the European Commission, and that whilst the body of the Regulation itself has remained unchanged, it has nevertheless evolved through a succession of Interpretative Guidelines or Communications⁵, not to mention the influence exerted by a number of rulings from the European Court of Justice.

By setting-up a broad framework of derogation, with sufficient leeway to adapt to local situations, the Maritime Cabotage legislation may be considered as an example on how EU law and policies can be adapted to island conditions while abiding by the fundamental goals laid out in the Treaty. It is a noteworthy illustration of the type of practice which should be followed in the field of European governance and, in particular, in the way territorial specificities should be dealt with. Similar mechanisms should be applied in other fields of EU policy which are of key interest to islands, or to territories beset by permanent and severe geographic and demographic constraints, as defined by Article 174 of the Treaty.

Of course, having praised this legislative framework does not mean that the Cabotage Regulation, or more generally that EU legislation on maritime transport, are above criticism, or that there is no need for further adaptations or improvements. On the basis of the discussion which took place in Bornholm in February 2010, the Islands Commission of the CPMR would henceforth wish to make the following recommendations.

⁴ The EU has two small island states (Malta and Cyprus), 24 island regions, and literally thousands of small inshore islands.

⁵ Communication on the interpretation of Council Regulation (EEC) No 3577/92, Brussels, 22.12.2003, COM(2003) 595 final; Community guidelines on state aid to maritime transport, 17.1.2004, Commission Communication C(2004) 43 (2004/C 13/03); Communication updating and rectifying the Communication on the interpretation of Council Regulation(EEC) No 3577/92, Brussels, 11.5.2006, COM(2006) 196 final.

i) ANAV Ruling

The European Commission has confirmed the applicability to island cabotage services of the ANAV Ruling (Case C-410/04 Judgment of the Court (First Chamber) 6 April 2006; i.e.:

“Articles 43 EC, 49 EC and 86 EC, and the principles of equal treatment, non-discrimination on grounds of nationality and transparency do not preclude national legislation which allows a public authority to award a contract for the provision of a public service directly to a company of which it wholly owns the share capital, provided that the public authority exercises over that company control comparable to that exercised over its own departments and that that company carries out the essential part of its activities with the controlling authority.”

It is understood that tendering may not be required if the aforesaid conditions are met. However, a degree of uncertainty exists about the full implications of ANAV Ruling (e.g.: is it applicable to the provision of services at national, regional or local levels?).

It would be useful if precisions about the impact and applicability of the ANAV Ruling were provided in a future Communication by the Commission.

ii) Maximum contract period for PSC

The issue of the maximum duration of a PSC raises conflicting views with, on one hand, the need to foster competition, and, on the other hand, the necessity for operators to be guaranteed a sufficiently long period of stability. The prevailing view seems to be that the present 6 year limit is somewhat too short, considering the time required for the depreciation of a vessel, the variations of the second-hand market for ships, as well as miscellaneous uncertainties (evolution of fuel prices, of capacity requirements, of environmental legislation or of technologies, etc).

As a consequence, the Islands Commission would like to recommend that the possibility of applying longer maximum contract durations, of up 12 years, be accepted by the Commission, if it can be demonstrated that shorter maximum durations are a hindrance to efficient tendering, considering the characteristics of a route and of its economy.

iii) Simplified procedure

The EU islands would welcome effort by the European Commission to simplify the tendering procedure which is considered as both lengthy and expensive, especially for the smaller island routes.

In that respect, the possibility for small island routes (<300,000 pax/y) to apply a simplified procedure with simple calls for expression of interest should be reconsidered:

- to take into account the implications of seasonality when the yearly traffic figures are distorted by the high volume of passengers during a relatively short tourist season, whereas traffic remains relatively low during the rest of the year,
- to avoid duplication of counting when an island is a transit island to other islands, and traffic figures are accumulated on that island.

One solution could be to increase the 300,000 pax/y threshold. Another one would be to accept as complementary criteria the level of permanent population of an island, so as to enable the smaller islands to apply this simplified procedure.

iv) Public service on an international route

Most of the European islands are, by nature, border regions, and would benefit greatly from the development of regular services to other member states or to third countries (the latter point being of special importance in the case of the outermost regions). However, the economic viability of such services is often uncertain, or at least a long-term affair, which raises the need for the imposition of PSO or the conclusion of PSC.

This point has, to a certain extent, been taken on board by EU maritime legislation, which has (in the Commission Communication C(2004)43, article 9) accepted that PSO or PSC would be acceptable on an international transport service if there was an "imperative need". However, the term "imperative need" has not been clearly defined so far.

Considering that the EU is presently endeavouring to develop the Motorways of the Sea, and that one of the goals of the MoS is "to improve access to peripheral and island regions and states", it seems logical that the possibility to apply either a PSO or a PSC on an international service serving an island be broadened.

This could be achieved:

- either by deleting the expression "imperative need";
- or by defining a service answering an "imperative need" as one which would:
 - a) allow an island to take advantage of its geographic proximity to another member state or third country;
 - b) contribute towards integrating an island or archipelago into the Motorways of the Sea;
 - c) help to meet the specific needs of the outermost regions.

v) EU financial support for international routes servicing islands

Decision No 884/2004/EC of 29 April 2004 amending Decision No 1692/96/CE on the Community guidelines for the development of the trans-European transport network, provides in its Article 5, the possibility for Europe to finance projects of common interest for the trans-European motorways of the sea network. This support is provided through temporary start-up aids, whose duration is limited to two years.

This mechanism should be broadened to provide temporary support for member states wishing to implement PSOs/PSCs on an international service serving an island.

This could be achieved by amending the aforesaid legislation through the following provision:

- [the EU] may also provide financial aid to a member state which, under the terms of Council Regulation (EEC) No 3577/92 on maritime cabotage, has concluded public service contracts or imposed public services obligations on an international route serving one or more of its islands, on condition that the aim of such obligations is to include the islands concerned in a broader network of motorways of the sea. This aid will be granted for a maximum of (X) years with a ceiling of (X)%."

The framework of the Motorways of the Sea legislation should also be extended to cover the situation of the outermost regions.

vi) Use of structural funds

The possibility to use structural funds for the purpose of purchasing vessels servicing islands has sometimes been accepted, sometimes rejected, depending of the programming period.

The main objection regarding the use of structural funds seems to be the risk of distorting competition, should a mobile infrastructure ever be used on a different route, and provide unfair support for an operator.

However, it may be argued such risks are non-existent if the ownership of the vessel remains in public hands, either by dissociating the vessel ownership from the provision of service (which would be open to tendering), or because the service is run by the public authority itself as a concession, under the terms of the ANAV Ruling.

Under such terms, the possibility to use structural funds to purchase vessels so as to provide lifeline services to islands should be explicitly allowed in the framework of the next programming period.

vii) Need for further studies on island cabotage

In spite of their best efforts to share information, the European islands consider that there is a dearth of comparative data on the provision of cabotage services to islands.

This makes it very difficult for public authorities to assess the terms proposed by operators, be it in terms of fares or in terms of subsidy, and to appreciate if they benefit for a reasonable deal considering the state of the market.

It would be very much appreciated if the European Commission could:

- undertake a comparative study on the provision of island cabotage services, whose purpose would be to provide some benchmarking on the average cost of running services according to a typology of situations**
- set up a database providing updated information on the existing PSO and PSC in force in the various EU islands, and providing basic information on the level of public subsidy, on the level of fares, as well as on the characteristics of the route.**