



# SEA TRANSPORT

**CPMR ISLANDS COMMISSION  
WORKSHOP ON ISLANDS TRANSPORT  
Shetland, 22nd & 23rd of November 2007**

**THE IMPLEMENTATION OF TENDERING  
PROCEDURE FOR PSOs ON ISLAND ROUTES HAS  
BEEN A SOURCE OF CONFLICT IN THE RECENT  
YEARS...**



# In Corsica...



# In the Western Isles...

*(News Headlines)*

« CalMac routes put out to tender »...

« Ferry routes tendering plan delay »...

« V Ships pulls out of ferry tender »...

« CalMac to be given ferry routes »



...and in Bornholm, Gotland, Gozo, etc.



# WHY?

- Competition is fundamental to EU Treaty
- The Commission accepts that Public Service Obligations or Public Service contracts may be imposed on island routes
- If financial compensation is being awarded, a tendering procedure is required
- This does not always work

- Island routes are sometimes insufficiently attractive to attract proper competition, but tendering has to go on just the same
- The tendering procedure may lead to a new operator taking over, with detrimental social consequences for the staff of the historical operator. In the field of maritime transport, in the event of undertakings being taken over, EU law does not protect staff as it does with land transport
- As a consequence, the economic impact in islands, where transport is an important source of employment, may offset for the public purse any gain arising from the tendering procedure

- Tendering procedures are complex and expensive
- They sometime end up with a single operator (the historical operator) as sole tender for the route
- They are feared as having potentially disastrous social consequences
- Public authorities have to go through tendering... but try to favour the historical operator at the same time

## A WIND OF CHANGE?

- In 2005, small island routes have been excluded by tendering procedure
- In 2006 ANAV Ruling by the Court of Justice
- In 2007 the Commission proposes to review the conditions for transfers of undertaking
- Generally, a more flexible and pragmatic approach from the Commission

## **Commission Decision on the application of Article 86(2) of the Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (2005)**

- This Decision applies to (c) Public service compensation for air or maritime links to islands on which **average annual traffic during the two financial years** preceding that in which the service of general economic interest was assigned **does not exceed 300 000 passengers.**
- State aid in the form of public service compensation that meets the conditions laid down in this Decision shall be compatible with the common market and **shall be exempt from the obligation of prior notification provided for in Article 88(3) of the Treaty,**

## **ANAV RULING (Case C-410/04) 6 April 2006**

- **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.**

# COMMUNICATION FROM THE COMMISSION

## Reassessing the regulatory social framework for more and better seafaring jobs in the EU COM(2007) 591 final

- ***e) Council Directive 2001/23/EC26 - Transfers of undertakings***

Article 1(3) of **the Directive excludes sea-going vessels in general.**

Neither the original Commission proposal (COM(74) 351) nor the amended proposal of 25 July 1975 (COM(75) 429) contained any specific reference to seagoing vessels.

However, as adopted on 14 February 1977 (Directive 77/187/EEC), the Directive contained already the exclusion which appears to have been prompted by a similar exclusion in the collective dismissals directive.

The Commission considered in 1994 in its proposal for revision of Directive 77/187/EEC27 that seagoing vessels could be excluded from the information and consultation rights granted by the Directive but not from its fundamental provisions, i.e., the maintaining of the employees' rights existing at the moment of the transfer.

This position was not accepted, however, by the Council. **On the face of it, there does not seem to be any specific reason to maintain this exclusion.**

In particular, the provisions of the Directive for safeguarding employees' rights do not appear to be incompatible with the special nature of the employment contracts or relationships on sea-going vessels.