Managed by the Association of European Border Regions by an Action Grant (CCI2017CE160AT082) agreed with the Directorate General of Regional and Urban Policy, European Commission. Financed by the European Union.

b-solutions

FINAL REPORT BY THE EXPERT

Advice Case: Seaflix¬_Cross Border Mobility

Advised Entity: French Riviera Chamber of Commerce – CCINCA, FR

Expert: Michele Vellano

Table of Content:

I. Description of the Obstacle

II. Indication of the Legal/Administrative Dispositions causing the Obstacle and Analysis of of a Possible Solution in Three Specific Contexts

III. Pre-assessment of whether the Case could be solved with the ECBM

IV. Other Relevant Aspects to this Case

V. References and Appendix/Appendices if any

Managed by the Association of European Border Regions by an Action Grant (CCI2017CE160AT082) agreed with the Directorate General of Regional and Urban Policy, European Commission. Financed by the European Union.

I. Description of the Obstacle

With regard to the factual aspects related to the Seaflix Cross Border Mobility project (hereinafter simply the project) and its realization contents, reference is made here to the document prepared by the CCI Nice Côte d'Azur - Département marketing and titled "Projet de navettes maritimes" in the April 2019 edition. The project has, in a nutshell, the goal of creating a long-term maritime transport service provided for remuneration on a coastal section that, in its largest extension, is expected to go from Cannes to Menton and, in the future, up to Ventimiglia. The service will be usable by passengers, both workers and tourists, and aims to help to relieve congestion in roads and railways on the French Riviera. The objective of the project, however, is not limited to the mere provision of a maritime transport service, but aims also at creating a cutting-edge project under a multiplicity of aspects and, therefore, requires a complex articulated legal regime that allows the understanding between subjects of different legal nature and, above all, belonging to different legal systems.

The project can be carried out through successive phases that obviously involve different increasing legal problems, according to what has been possible to reconstruct on the basis of the related dossier (hereinafter, the dossier), made available by the ICC, and of the conversations with the managers of the same, intervened in Nice and in the Principauté de Monaco during the week from the 2nd to the 6th of September. For ease of analysis of these problems, we can identify in hypothetical terms three possible scenarios, that are not necessarily alternative but can rather be integrated, possibly in later periods. At the present stage of project design, the second scenario, as we shall see, is the most likely to be realized. This circumstance does not deprive of interest the other two scenarios, namely the first and the third. This peculiarity of the project implies the need to face the issue of the existence of legal obstacles and possible solutions according to a tripartite scheme of different scenarios.

It goes without saying that the choices that will be made from now on will inevitably affect (facilitate and / or delay) the development of the project in its most developed dimension, namely the cross-border dimension. In fact, it is evident from now on that the cross-border scenarios (2nd and 3rd) imply choices that involve public entities of different hierarchical levels and of different States and therefore constitute the scenarios that need, in the perspective adopted in this report, the largest deepening. In any case, even the first scenario, namely the purely internal one, implies, for some aspects, to take into consideration European Union law.

Although, as already mentioned, there are three different scenarios for the implementation of the project that will be discussed separately one after the other, it is possible to identify some recurring aspects that can be usefully highlighted in advance in relation to all three scenarios.

A first common element, from the legal point of view, of the three scenarios is the public approach to the realization of the project, also because of the public service or, in any case, of the public interest which it would support (maritime passenger transport) with all the consequent implications

from the managerial point of view (choice of the service provider through open tender, definition of the tariffs charged to the public and of the contents of the service, possible public financial contributions for the sustainability of the operation). This approach distinguishes the service in question from maritime services, currently or someday provided by private subjects according to merely entrepreneurial logic on portions of the routes in question and addressed, in any case, to a well-identified category of users, i.e. exclusively tourists[1]. It should in fact be specified that, in principle, the exercise of an activity of national or international maritime transport provided at market conditions by an economic operator (even if the company's capital is held wholly or partially by one or more public bodies, even within the limits indicated in relation to the relevant institutional competences, as discussed below) would not seem to raise particular difficulties from a legal point of view, since it is a sector liberalized both in the internal perspective of a single Member State (reg. (EEC) n. 3577/1992) and in the prospect of cross-border transport between Member States or between Member States and third States (Regulation (EEC) No 4055/86).

A second unifying element, not only but also from the legal point of view, and which derives from the previous one, is the approach that the project can / wants to take in order to satisfy the main need, namely that of creating an alternative mode of transport for people in order to decongest overland transport. This second element can be further split into that of environmental sustainability and, at the same time, into that of using the most advanced technology in the service provision methods. Both of these aspects may become particularly relevant within the context of the second and third scenarios, but are not extraneous to the first one. These aspects are very well and inherently linked to the project, which by its very nature is both innovative (technological aspect) and careful to the most current needs (environmental sustainability). These two aspects could also be an important incentive in terms of financing of the project by national public bodies (State / s, local territorial bodies, Universities, research bodies, Foundations) and by the European Union.

A third element characterizing the project, at least with reference to scenarios 2 and 3, is that of "creating a system" between territorial entities of different States that are faced with and interested in attempting to elaborate a joint solution to a transversal problem, namely that of congestion of land traffic, especially by road, along that stretch of coast. Hence, the cross-border setting of the project from the geographical point of view, as well as from the institutional one. It should be emphasized that this is not an obvious approach and, above all, not necessarily due[2].

[1] The dossier on the project analyzes in depth the issue of the costs and prices of the related lines, highlighting how the accessibility and usability of the service by the categories of workers who would use it, potentially every day, implies the adoption of ticket prices and season tickets incompatible with the realization of profits. In addition, a further objective of the project is to integrate the maritime transport with others on the ground (bus, train) in a rationale of substitutability that implies the use of the same ticket / pass and, therefore, its same price.

[2] In this specific regard it may be useful to refer to the bus transport system on part of the same route, but on land. There is a bus line, the number 100, which currently connects Nice to Menton and which passes through Monaco. The bus line is in all respects a traditional line (distinguished by 61 stops, some of which are inside Principauté de Monaco) carried out by the company that manages the Lignes d'Azur. It would certainly be useful to investigate which is the legal framework of line number 100, if there is one, especially on the part of

Alternatively, each State (or local authority)[3] could decide to fully and unilaterally take charge of the solution to the problem. In case of implementation of the second and third scenarios this would imply, at the very least, the agreement between the party responsible for carrying out the service and the bodies managing the ports involved in order to allow the approach of the shuttles at the respective docks and the solution of certain problems of taxes deriving from the issuance of tickets and the assumption of the relative payment on the territory of third States[4]. The reason for a choice that goes in the direction of a shared project does not seem to be only (although certainly also) of economic-financial nature, in order to share especially the initial investment costs, which will certainly be high and probably at a loss, but can be found in the natural and acceptable conviction that common territorial problems can be better solved bilaterally and / or multilaterally rather than unilaterally. In any case, here we will only consider the bilateral and / or multilateral approach and not merely the one-sided, as this is required by the hypothesized scenario (second and third), and the contribution given by European Union law will be taken into particular consideration[5].

The same method will be used in approaching the three hypothesized scenarios. Therefore, after a brief description of the contents of the scenario taken into consideration, the specific legal obstacles and the possible solutions to overcome them will be highlighted.

II. Indication of the Legal/Administrative Dispositions causing the Obstacle and Analysis of a Possible Solution in Three Specific Contexts

---

the Principauté de Monaco. The helicopter transport service between the Principauté de Monaco and the airport of Nice, and the other way around, can also be of interest. From what has been possible to reconstruct, the helicopter service is performed by a company based in the Principauté de Monaco holder of an agreement with the Principauté de Monaco, after a competitive procedure. Also in this case, the reconstruction of the juridical context in which the service is rendered appears of interest because it could suggest some repeatable cues in the project under examination. It should, however, be pointed out that the bus service can be considered at least of public interest, whereas the helicopter service has the typical characteristics of a private service and, therefore, as far as it was previously observed, it has a different nature from the service which would be offered by sea.

[3] Except for the limits deriving from its competences, to which we will later return.

[4] Although these are not insignificant problems, they could be solvable. It should be noted, in this regard, that passengers on line 100 buy the ticket directly on the bus and this happens either on the French territory or on the territory of the Principauté de Monaco. This is a precedent that deserves attention.

[5] Consider that in the communication of the European Commission COM (2017) 534 final, 20.9.2017, we read (pp. 14-15-18) «Les services de transports publics, en particulier, non seulement contribuent aux processus d'intégration, mais améliorent aussi la viabilité de la connectivité transfrontalière» and again «l'organisation et la mise en œuvre de services de trasports publics transfrontaliers sont une compétence qui incombe aux niveaux national, régional et local. Les Etats membres, les régions et le municipalités sont donc invités à intensifier leurs efforts afin d'offrir aux citoyens des services de transports public de meilleure qualité et plus intégrés», «Ils devraient véritablement s'orienter vers une coordination accrue, une plus grande reconnaissance mutuelle et une harmonisation plus étroite avec chaque pays voisin».

.

As already anticipated, in consideration of the fact that the project is, at present, susceptible to territorially different realizations as per its territorial dimension, we will proceed to the examination of the possible presence of legal obstacles and, jointly, to the relative solutions according to three distinct scenarios.

SCENARIO 1

Cannes, Antibes, Nice, Cap d'Ail, Menton

This is the simplest case, but also the most remote with respect to the current drafting of the project; itis not to be completely omitted in the event that it is decided to start with a trial that initially involves only French ports. This scenario would be completely ruled by French law and European Union law.

In particular, the aspects relating to EU law are residual, but not absent.

A first aspect concerns the regime of liberalization of internal maritime transport. The Reg. (CEE) n. 3577/1992 has extended the opening of the market for internal maritime services, initially excluded from the scope of liberalization by the Union legislator. The possible assignment of the service should, therefore, also be open to subjects of the European Union, that are not necessarily French.

A second aspect concerns the profiles of possible subsidies originating from public resources, which could be incompatible or susceptible to prior assessment through notification to the European Commission. In summary, in the design of the service and the methods of financing, it will be necessary to take into consideration that this is a sector potentially open to the market. This will oblige us to reduce to the strict minimum the public contribution to the provision of the service and probably to limit the subsidized services (e.g. different rates for the transport of residents and tourists, for which there is a market on which a competitor operates), in line with the state aid regulation for the compensation of the costs arising from the provision of public services and / or services of general economic interest and, more particularly, Communication C (2004) 43 on State aid to maritime transport. A more detailed analysis of these profiles is contained in a specific document attached to this report referred to as **Annex I**.

Problems

The problematic legal aspects that can be highlighted in a purely internal scenario, as well as the implications deriving from the elements briefly mentioned above (first and second element), lie outside the scope of the approach adopted in this report and, consequently, are not taken into consideration here, also because they can be better raised and analyzed by a lawyer under French law. Similarly, all aspects linked to the existence of possible *ad hoc* funding opportunities that can be disbursed for the realization of the project by bodies governed by French law are omitted.

Possible solutions

In the light of the above, it does not seem necessary to submit specific proposals for solutions in relation to this first scenario. Instead, it may be appropriate to investigate further if there are forms of financing of European Union origin that can be highlighted for the specific case. At the moment, there would be none with regard to the 2014-2020 planning of the structural funds in relation to the Région Sud or even with regard to direct financing. Therefore, it would be necessary to bring to the attention of the Région Sud the opportunity to include in the 2021-2027 programming a special financing axis for projects for mobility and connection with alternative and innovative (or expressly maritime) means.

Conclusions

Although this first scenario is the least likely to be developed (unless as an early stage of implementation of the project), it is also the one posing the least number of legal problems, mostly connected to French public law and, only to a residual extent, related to European Union law. This scenario must, however, be taken into consideration in view of what will be said with reference to the other two (2nd and 3rd).

SCENARIO 2

2.1. Cannes, Antibes, Nice, Monaco, Menton or, alternatively, 2.2. Nice, Monaco, Menton.

The second scenario is the most likely one to be realized in the short term. Two different solutions are currently envisaged (described in sections 2.1. and 2.2.), which could be developed without necessarily going through the first scenario. Preference for the second scenario, at least the Nice-Monaco, on an experimental basis (3 years) in a first phase, is eminently practical: the estimated passenger traffic on the Nice - Monaco A / R section is by far the most significant, followed by the traffic on the Monaco-Menton A / R line, so as to justify, even if not entirely cover, the economic investment in project implementation. Both the solutions falling within this scenario would be governed, in both hypotheses, by French law, Monegasque law and European Union law.

The aspects pertaining to European Union law are obviously much more relevant compared to the first scenario.

Problems

This second scenario poses rather significant legal problems mainly pertaining to the French and Monegasque domestic law. One of the most relevant aspects concerns the relations between the two legal orders for the purpose of rendering the project operational and, therefore, of providing an effective maritime shuttle service. Suffice it to note that, in all likelihood, in order to implement the project, it would not be necessary, although obviously possible and in some ways desirable, to stipulate a specific international framework agreement between France and Principauté de Monaco, involving the French (Région Sud, Metropolitan City of Nice and CCI of Nice) and Monegasques (the City of Monaco[6]) territorial bodies [7]. In fact, the territorial entities could agree

[6] It should be noted that the City of Monaco has no competence with regard to transport, which, instead, is under the responsibility of Principauté de Monaco.

directly, as we will see below, although always with the prior authorization, for those in France, of an "arrête du représentant de l'Etat dans la région"[8] and those in Principauté de Monaco, "sous reserve d'en tenir informé le Ministre d'État"[9] . The choice of the registered office and, therefore, of the applicable domestic law of the entity set to oversee the assignment of the service would therefore be an essential point. In this regard, it is far too obvious that the choice of an institution with its registered office in France and applying French law would simplify things very much on the French side, but complicate them on the Monegasque side, and, of course, vice versa.

By limiting the perspective to the point of view of French law, the implementation of the project is confronted with a series of regulatory obstacles of a certain importance, that mostly refer to the formulation of the regulations in force with regard to the competence of French territorial bodies on the subject of urban and / or interurban transport and, more specifically, of maritime transport. At first reading, the current French legislative system does not contemplate, at least expressly, the possibility that local territorial bodies may deal with coastal maritime transport outside their territorial area of competence, least of all if the landfall is in the territory of a third state. This last gap in the French legal system should be filled, although it is explained in the light of the peculiarity of the case under consideration with respect to the French territory as a whole.

Possible solutions

The implementation of the project on the basis of this scenario implies, first of all, a legislative intervention or, alternatively, the sharing of an authentic interpretation by the territorial bodies involved (Région Sud, Metropole de Nice, CCI), which fully recognizes the title and the competence of the local authorities to undertake administratively and financially to activate a public service (or a service of public interest) of cross-border maritime transport.

In the first instance and on the basis of a personal opinion, it seems to me that the recognition of the competence of the territorial bodies involved can be immediately achieved through a teleological interpretation. Indeed, there is no doubt that the French territorial authorities have competence in urban and interurban transport and, at the same time, in matters of cross-border agreements with territorial entities of neighboring states. It can therefore be argued that, if jointly considered, the two competences should suffice to allow the French territorial authorities to carry out the project in question. It seems tenable to conclude, therefore, that the implementation of the

[7] We suggest carefully checking the content of all the Conventions currently in force between the two countries (or between the territorial bodies of the two countries) which, although formally dedicated to another topic, could nevertheless be used as a legal basis to make possible the realization of the project just in the way they are written or, alternatively, with the adoption of a special *addendum*, always, of course, only if the adoption procedure of the latter is faster and easier than the stipulation of an *ad hoc* international Convention. It may also be useful to refer to the Franco-Swiss intergovernmental Convention which has settled the *de facto* agreements between the territorial authorities of Lake Léman, precisely with reference to the public transport of passengers on the Evian-les-Bains and Lausanne route. The European and External Funding Department of the Metropole de Nice Côte d'Azur has identified this interesting precedent and has the relevant documentation.

[8] This is a recurring provision in the Code général des collectivités territoriales - CGCT.

[9] Art. 25, law 24 july 1974 of Principauté de Monaco.

project could occur on the basis of the current French legal framework regulating the conferral of competences to territorial bodies[10]. It goes without saying that legislative clarifications and, possibly, derogations in favor of border territorial bodies would be, in any case, valuable and desirable.

If it is assumed that the French territorial bodies are already competent (or become so as a result of an intervention by the French legislator), there are two main solutions that can be practiced on the basis of French domestic law, both contained in the *Code général des collectivités territoriales* (CGCT): the solution expressly provided for by Article L. 1114-4-1 CGCT[11], which allows the creation of the cross-border *Groupement local de cooperation* - GLCT, and the one envisaged by art. 1115-4 CGCT[12], which contemplates the participation of French territorial bodies in a body governed by public law or in the capital of a company in a frontier State of the European Union or of the Council of Europe[13].

European Union law offers a very interesting alternative to a legal solution which is only Franco-Monegasque. Thanks to the current regulation of the European Groups of territorial cooperation - EGTC, as regulated by the regulation (EC) No 1082/2006 as amended by regulation (EU) No 1302/2013, in fact, today it is possible to set up an EGTC starting from an EU Member State and only one neighboring third State in accordance with the provisions of art. 3bis, second paragraph, of the Regulation: «The EGTCs peut etre composé de membres situés sur la territoire of a seul Etat membre et d'un ou plusieurs pays tiers voisins de cet Etat membre (...)». It should be noted that this possibility has been introduced by regulation (EU) No 1302/2013, which modified the previous regime provided on this matter by regulation (EC) No 1082/2006. Although not strictly necessary[14], also in this case the intervention of the French Legislator in order to adapt Article 1115-4-2-CGCT to the change made by regulation (EU) No 1302/2013 would be helpful to simplify the procedure to establish a Franco-Monegasque EGTC[15].

---

[10] This consideration, since it is a matter of French domestic law, must necessarily be assessed by jurists with knowledge of French domestic law, to whom reference is made for a final determination on this point.

[11] In accordance with L. 1114-4-1 of *Code général des collectivités territoriales* : « Dans le cadre de la cooperation transfrontalière, les collectivités territoriales et leurs groupements peuvent créer des collectivités territoriales étrangères et leurs groupements un groupement local de coopération transfrontalière dénommé district européen, doté de la personnalité morale et de l'autonomie financère ».

[12] In accordance with L. 1154-4 of *Code général des collectivités territoriales*: « Les collectivité territoriales et leurs groupements peuvent, dans les limites de leurs competences et dans le respect des engagements internationaux de la France, adhérer à un organisme public de droit étranger ou parteciper au capital d'une personne morale de droit étranger auquel adhère ou partecipe au moins une collectivité territoriale ou un groupement de collectivités territoriales d'un Etat membre de l'Unione européenne ou d'un Etat membre du Conseil de l'Europe ». Therefore, without prejudice to the problems of competence of the territorial bodies involved, this further solution could also be envisaged.

[13] As is known, the Principauté de Monaco is a member of the Council of Europe.

[14] It is known, in fact, that the law of the European Union and, therefore, of the regulation prevails over the domestic law of the Member States.

[15] In practice, the current formulation of 1115-4-2-CGCT is not aligned with the amending intervention carried out by regulation n. 1302/2013.

It would also be important and advisable to investigate if EU funds (direct and indirect) are available, in particular as regards environmental sustainability and technological development. In particular, it would be absolutely strategic to suggest[16] the inclusion in the 2021-2027 programming, as far as the Région Sud is concerned, of a special financing axis for projects supporting mobility and connection with alternative and innovative (or expressly maritime) means. Furthermore, it would be important for the European Union to activate, with the new 2021-27 programming direct financing programs for initiatives aimed at strengthening the facilitation of maritime transport, including local transport in terms of environmental sustainability and technological innovation.

Conclusions

This second scenario is the most likely to be implemented and poses several legal problems, mostly related to French and Monegasque public law. European Union law is at stake, in relation to the aspects already considered with reference to the first scenario, as well as according to regulation n. 1082/2006, as amended by regulation no. 1302/2013, and, in particular, on the basis of the provisions of the aforementioned art. 3bis, second paragraph. In practice, France could decide to choose this legal institution to establish a collaboration with the Principauté de Monaco, mainly in the perspective of extending it to Italian territorial bodies. It is an alternative to other solutions (for example, to that of the cross-border Grouping of local cooperation - GLCT, expressly foreseen by article L. 1114-4-1 CGCT, or to that, foreseen by the L 1115-4 CGCT[17], which contemplates the participation by French territorial bodies in an *ad hoc* foreign company). However, in addition to the already examined problems of potentially involving local authorities in France and the Principauté de Monaco[18], it is necessary to consider an aspect that is anything but secondary, with respect to the full realization of the project (third scenario), albeit only possible at this time. The choice of an institution governed solely by French law, or the result of a Franco-Monegasque agreement, would, in fact, constitute a significant obstacle with regard to a subsequent extension of the collaboration to Italian territorial bodies. This could hamper or at least a delay the full development of the project in its wider territorial dimension, posing a risk to the future possibility to realize the third scenario that should be already understood and carefully evaluated we need right now to be aware of. On the contrary, the immediate recourse to the establishment of a Franco-Monegasque EGTC would allow, at a later stage, the adhesion to the same also by the Italian

[16] A State-Regions Committee for European Structural and Investment Funds 2014-2020 was held on July the 2nd 2019 at the General Commissariat for Equality of the Territories. This committee made it possible to agree on the implementation of the preparation of European funds 2021-2027. This future programming will be framed by a Partnership Agreement, as it happens with the current generation of programs (2014-2020). This work, which involves stakeholders in the implementation of European funds in France, will take place throughout 2019 and 2020 with the aim of transmitting the Partnership Agreement to the European Commission at the end of 2020. A State-Regions Committee will be held in autumn 2019 to make a report on the progress of the work.

[17] Pursuant to the aforementioned Law 1154-4 CGCT and without prejudice to the problems of competence of the territorial bodies involved, this further solution could also be envisaged. The participation in the capital of the Company by French territorial entities could not exceed 50% and would necessarily involve participation in the capital of the City of Monaco (and not of the Principality).

[18] As already mentioned, it should be noted that the City of Monaco has no competence with regard to transport, which, instead, is under the responsibility of Principauté de Monaco.

territorial and public bodies. Furthermore, the choice of a European Union law body could favor the possibility that it becomes a future recipient of European Union funding for the project (consider, in particular, the opportunities offered by funding dedicated to cross-border territorial cooperation and also direct financing), without prejudice to the need to respect the rules on the awarding of the service by tender or possibly carried out "in house", as well as the provisions on State aid with regard to funding from the Member States. With regard to this last profile, it should be noted that, in the current legal framework, any public funding granted by the public authorities of Monaco could not be considered as "state aid", provided that articles 107 et seq. TFEU apply only to EU Member States. The situation could at least partially change in the future, given that the EU Commission has proposed the inclusion of competition and state aid rules in the Association Agreement between the EU and Monaco, Andorra and San Marino, which is currently under discussion. For these reasons, I suggest that, if we opt for the realization of the second scenario but at the same time we want to take into serious consideration a extension of the territorial reach of the project and the realization of the third scenario, it would be preferable to already proceed with the creation of a Franco-Monegasque EGTC rather than developing a purely bilateral solution under Franco-Monegasque law.

This second scenario must, however, be taken into consideration in view of what will be said with reference to the third and last scenario.

SCENARIO 3

Cannes, Antibes, Nice, Monaco, Menton, Ventimiglia

This is the most complex and currently the most remote hypothesis for project implementation, but also the most complete. This scenario would be governed by French, Monegasque and Italian law, as well as by European Union law.

In addition to what has already been said with reference to the first and the second scenario, to which reference is made here, it is necessary to add some further considerations. They concern, on the one hand, Italian law and, on the other, European Union law.

Italian law

On the basis of Italian law, the participation of public territorial bodies (Region and Municipalities) in the EGTC is allowed. However, doubts can arise with regard to the administrative and accounting legitimacy of the direct participation of the same bodies in the capital of a company governed by French or Monegasque law or, in any case, the legitimacy of an economic disbursement that directly or indirectly addresses this company. The hypothesis that the Entity entrusted with the management of the port of Ventimiglia enters the capital of the aforementioned French / Monegasque company could be practicable, instead.

There are also other profiles of Italian domestic law which would be at stake, in the hypothesis in which the shuttle service is also extended to the port of Ventimiglia. For the sake of conciseness, this matter is discussed in **Annex II**, which provides a brief overview of relevant legal issues posed by the Italian legal system.

European Union law

In addition to the aspects of European Union law previously mentioned with reference to scenarios 1 and 2 (in particular, concerning state aid and EU funding), everything is more evident in this third scenario: the opportunity offered by the law of the European Union, through the already mentioned regulation n. 1082/2006, as amended by regulation no. 1302/2013, of the creation of a specific Franco, Italian, Monegasque EGTC as a body managing the service of maritime shuttles either directly or, more likely, through entrustment to a private third party through a European public tender.

Problems

This scenario, like the previous one, poses many problems concerning three internal legal systems (the French, the Principauté de Monaco and the Italian one) and the European Union system. What we want to highlight here is that the unifying element that permeates the realization of the project imagined on the basis of this third scenario is European Union law. This is a specific advantage, because European Union law prevails over French and Italian national law and must also be taken into account by Monegasque law. Attention should be paid, for example, to the fact that in this way the objections regarding competence and regarding the legitimacy of the involvement of bodies such as the Regions or the Metropolitan City or the ICC itself to the realization of the project in question could be overcome. It is necessary, however, to consider that the establishment of the EGTC involves a rather laborious process and long times, especially if among three institutions of three different States (one of which is not from the European Union). It should be added to this that the choice, not *a priori*, of the EGTC's headquarters plays a decisive role, in many respects, for the success of the project. Then, after the decision, delicate aspects of domestic law, that are strongly connected to the place of the EGTC's registered office, should be addressed. Consider, by way of example only, the subject of the employment relationship of the EGTC's collaborators and the issue of taxation, which would be regulated by the national law of the State of the registered office of the EGTC.

Possible solutions

As under the second scenario, also in this scenario it is possible (optional and not mandatory) to refer to the opportunity offered by European Union law to set up an *ad hoc* EGTC. It is obviously a matter of examining the feasibility in concrete and not only abstractly of this possible choice and dissolving a series of absolutely strategic nodes, such as, by way of example only, that of the State in which the registered office of the new EGTC is located.

Obviously, it may be appropriate to check if forms of financing of European Union origin (direct and / or indirect financing) that may come to the fore in the specific case are available. Especially in this third scenario, it would be absolutely strategic to obtain the inclusion in the 2021-2027 programming in relation to the Région Sud of a specific axis of financing of projects for mobility and

connection with alternative and innovative (or expressly maritime) means and, in accordance with the Italian Authorities, also in cross-border territorial cooperation. *A fortiori*, with reference to this third scenario, it would be important for the European Union to activate, with the new 2021-27 programming, direct financing programs potentially usable for initiatives aimed at enhancing the facilitation of maritime transport, including local transport in terms of sustainability and environmental and technological innovation.

Conclusions

Although this third scenario is the farthest among those that could lead to the realization of the project and although it can only be envisaged at a later stage, it poses the greatest number of legal problems of mostly of internal public law and, in a residual way, of European Union law. Nevertheless, it constitutes the most suggestive scenario, because it is the most complete and definitive among those analyzed, and it is the one in which the law of the European Union could exert all its potentialities for the benefit of the realization of a cross-border project providing adequate legal answers and important economic financing in response to an objective, relevant and, indeed, cross-border need. With reference to this third scenario, as well as with reference to the second scenario, it is therefore suggested to set up an *ad hoc* EGTC that oversees the management of the service with the assignment, through public tender, by a third party.

III. Pre-Assessment of whether the Case could be Solved with the ECBM

On the basis of the considerations made in the previous paragraph, it is clear that the establishment of the European Cross-Border Mechanism (ECBM), envisaged by the communication of the European Commission COM (2018) 373, constitutes an excellent opportunity to put the French border territorial bodies, first of all the Région Sud, the Ville Metropole de Nice, the CCI de Nice - Côte d'Azur and, in the future, eventually the Italian ones in the best conditions to carry out the project in question.

In particular, as it has been pointed out in the previous paragraph, it would certainly be appropriate, although perhaps not fundamental[19], to introduce some legislative changes with regard to: a) the French internal legislation concerning the competence on the regulation of coastal maritime transport and / or transport in general; b) the *Code de la commande publique* with regard to the possibility of establishing « a groupement de commandes avec des acheteurs d'autres etats membres de la Unione européenne ou la Principauté de Monaco » and c) the legislation contained in the CGCT in the sense of extending or, however, certifying the competence of the French territorial public bodies (Regions and cities) to regulate, manage through assignment and finance a cross-border coastal maritime transport service, therefore by definition partly outside its own territory of reference. The same result could be achieved if the European Union, insofar as this is allowed by the current formulation of the provisions contained in the Treaty on the Functioning of

[19] Provided that a teleological and broader interpretation of the scope of the regulations currently in force is achievable.

the European Union (TFEU), takes responsibility for directly regulating the specific subject of cross-border passenger service of maritime transport, which to date is not.

IV. References

- Chambre de Commerce et d'Industrie Nice Côte d'Azur – CCI, *Projet de navettes maritimes*, avril 2019;
- Commission européenne, *Communication de la Commission au Conseil et au Parlement européen, Stimuler la croissance et la cohésion des régions frontalières de l'UE*, COM (2017) 534 final, 20.9.2017;
- Philippe Cossalter (ed.), *La coopération transfrontalière en Grande Région*, Editeur Editions juridiques franco-allemandes, 2016;
- Michele Vellano, *Le molte varianti della cooperazione transfrontaliera: aspetti generali e peculiari rispetto al confine italo-francese*, in S. Doumbé-Billé e A. Oddenino (eds.), *Le rôle des régions dans la coopération internationale transfrontalière – L'expérience franco-italienne*, Editoriale Scientifica, Napoli, 2016, pp.15-27;
- Michele Vellano, *La cooperazione regionale nell'Unione europea*, Giappichelli Editore, Torino, 2014;
- Thomas Perrin, *L'institutionnalisation de la coopération transfrontalière en Europe*, CERISCOPE Frontières, 2011.

2 Annexes:

Annex I – State Aid Rules

Annex II – Italian Legal Order

Michele Vellano

ANNEX I

STATE AID RULES

The public nature of the project does not exclude the need to comply with State aid rules contained in the Treaties and to notify the measure to the EU Commission before it is carried out (Articles 107 and ff. TFEU). Maritime shipping services have been liberalized and, in principle, can be freely provided by economic operators at market conditions. The opening of the market is *inter alia* confirmed by the fact that an undertaking is actually operating on the envisaged maritime route, although targeting only one kind of prospective customers (*i.e.* tourists). The fact that the envisaged services could be provided by a public body (a public authority and/or a publicly owned company) does not exclude, but rather reinforce, the obligation of the public authorities and bodies involved in the development of the project to take all necessary measures in order to ensure that the potential distortion of competition on the relevant market is reduced as much as possible. This need holds true in each of the three scenarios described in the Report and, therefore, regardless of the territorial extension of the envisaged maritime transport service and/or of its domestic or transnational dimension.

As a matter of principle, granting public support to the development of the project is likely to fall within the scope of application of Article 107 TFEU. Save as otherwise provided in the Treaties, such disposition declares incompatible with the internal market any aid that (*i*) is granted by a Member State or through State resources in any form whatsoever, that (*ii*) favours certain undertakings or the production of certain goods, that (*iii*) affects trade between Member States, and that (*iv*) distorts or threatens to distort competition.

These four criteria are interpreted broadly by the EU Commission and the European Court of Justice (hereinafter, the "*ECJ*"). For example, the prohibition of State aids applies not only to the granting of positive economic advantages aid but also measures relieving the recipient undertakings from economic burdens and/or costs inherent in their economic activities (*e.g.* fiscal aids). Even the authorization and/or concession issued by a national public authority in favor of a given undertaking to allow the latter to use a state-owned land and/or infrastructure (*e.g.* a port area) has been sometimes qualified by the EU Commission as State aids if what the undertaking paid for the right to exploit the infrastructure is less than what it would pay for a comparable infrastructure under normal market conditions and/or if the fee paid is not enough to cover the costs of construction and/or renovation of the infrastructure[20].

Similarly, Article 107 TFEU prohibits not only measures decided by the central government; rather, it covers aids granted with any kind of resources pertaining to the public sector, including resources of intra-State entities (decentralised, federated, regional or other, such as *Région Sud* or the Metropolitan City of Nice) and, under certain circumstances, resources of private bodies. By contrast, in the current legal framework any public funding granted by the public authorities of

[20] Cfr. *inter alia* Commission Decision 20 September 2018, on the state aid SA 36112 (2016/C) (ex 2015/NN), *implemented by Italy for the Port Authority of Naples and Cantieri del Mediterraneo S.p.A.*

Monaco could not be considered as "state aid" provided that Articles 107 and ff. TFEU apply only to EU Member States. The situation could at least partially change in the future, given that the EU Commission has proposed the inclusion of competition and state aid rules in the Association Agreement between the EU and Monaco, Andorra and San Marino currently under discussion.

In any case, the above does not mean that the project cannot be (wholly or partially) funded through public resources. Rather, the above entails that it is necessary to individuate a proper EU law legal basis (*i*) supporting the compatibility of the measure with State aids rules and (*ii*) possibly making possible to avoid its prior notification to the EU Commission pursuant to Article 108(3) TFEU. The need to carry out the notification would delay the development of the project as long as the EU Commission will issue its final decision on the compatibility with the internal market of the funding measure.

The main features of the project suggest that the most suitable solution seems to be the one of relying on the EU legal regime on so-called services of general economic interest (so-called "*SGEI*")[21].

Article 106(2) TFEU provides a derogation to the general prohibition of State aids and permits Member States to support public services that would not be provided without public funding, essentially because under market conditions the revenues which can be made by providing the service do not cover the relevant costs. If the compensation does not exceed what is necessary to cover the costs incurred by the undertakings in the discharge of public service obligations established by Member States, the measure does not constitute State aid because no advantage is granted.

Preliminary, it should be noted that reg. (EU) No 360/2012 establishes that so-called *de minimis* aids granted by Member States to undertakings providing SGEI fall without the scope of application of Article 107 TFEU. Therefore, should the total amount of the aid granted in order to support the development of the project not exceed EUR 500 000 over any period of three fiscal years, the measure would be per se compatible with EU law. As such, there would be no need to notify the measure to the EU Commission ex Article 108 TFEU[22].

Should the total amount exceed such sum, it would become necessary to ensure that the project is developed in compliance with the four cumulative conditions established by the ECJ in order to avoid that the recipient of public funding is over-compensated[23]. The first condition is that the SGEI is conferred to an entrustment act in which the public service obligations to discharge are clearly and *ex ante* defined. The second condition is that the compensation is calculated on the basis of parameters established in advance in an objective and transparent manner in order to avoid over-

[21] Protocol 26 to the TFEU on services of general interest aims at protecting «*the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users*».

[22] Cf. Commission Regulation (EU) No 360/2012 of 25 April 2012 *on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest*, OJ L 114, 26.4.2012, p. 8.

[23] Inter alia, see ECJ 24 July o 2003, *Altmark Trans GmbH*, C-280/00, ECLI:EU:C:2003:415

compensation. The third condition is that the compensation does not exceed the sum necessary to cover the costs incurred by the entrusted undertaking to discharge the public service obligations, taking into consideration the relevant revenue made by the undertaking and a reasonable profit. The fourth condition is that the undertaking to be entrusted with the SGEI is chosen through a public procurement procedure making possible to select the economic operator capable of providing the SGEI at the least cost to the community; should this not be the case, the level of compensation shall be determined on the basis of the costs that would be incurred in order to provide the SGEI by a typical undertaking, well-run and adequately provided with means to meet the public service requirements.

These four conditions have been further elaborated by the EU Commission with several pieces of legislation adopted in 2011 and 2012, among which (*i*) the Communication No 2012/C 8/02 on the application of EU State aid rules to compensation granted for the provision of SGEI[24], as well as (*ii*) the Decision establishing that some form of public service compensation granted to certain undertakings entrusted with the operation of SGEI are compatible with the Treaty[25]. It follows that such acts will have to be carefully taken into consideration during the development of the project. The need to ensure that the entrusted undertakings are not over-compensated also requires compliance with the Directive No 2006/111/EC on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings. In order to ensure the transparency of financial relations, Directive No 2006/111/CE requires public undertakings to maintain separate accounts in order to is correctly reflected in the separate accounts, so that from such accounts clearly emerge at least (*i*) public funds made available by public authorities to the public undertakings concerned, (*ii*) public funds made available by public authorities through the intermediary of public undertakings or financial institutions, as well as (*iii*) the actual use of these public funds.

In short, the legal regime of SGEI would allow the support of the development of the project as far as the public funding (*i*) is calculated on the basis of parameters established in advance in an objective and transparent manner in order to avoid any advantage on the side of the entrusted undertaking, (*ii*) covers only the costs directly connected to the SIEG (so that, for example, it will be necessary to establish different rates for the transport of residents and tourists, for which there is a market on which a competitor operates), deducted all the revenue potentially made by the undertaking and (*iii*) takes into consideration a reasonable profit on the side of the undertaking.

As an alternative to the legal regime applicable to SIEG, the EU legal order offers other legal basis that could be potentially relied upon in order to justify the public support to the project, also in the

[24] Cf. Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest, OJ C 8, 11.1.2012, p. 4

[25] Cf. Commission Decision No 2012/21/EU of 20 December 2011 *on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest*, OJ L 7, 11.1.2012, p. 3.

light of some specific features of the project discussed in the Report, such as the attention paid to environmental sustainability.

On the one hand, one should consider reg. (EU) No 651/2014 (so-called "*GBER*"), by which the EU Commission qualified specific kinds of funding measures falling with the notion of State aid as compatible with the internal market. As a consequence, such measures are exempted from the notification requirement of Article 108(3) TFUE[26]. One of the Sections of Reg. (EU) No 651/2014 is entirely dedicated to aiding measures aiming at protecting the environment. Such Section, therefore, could for example relied upon to support the purchase of particularly environmentally friendly vessels to be used for the performance of the maritime transport service. Pursuant to Article 36 of reg. (EU) No 651/2014, investment aids enabling the beneficiary to increase the level of environmental protection by going beyond the applicable EU standards or in the absence of Union standards are considered compatible with the internal market. If the investment aids are granted to a small undertaking (*i.e.*, an undertaking employing fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million), the aid intensity may reach the 60 % of the investment costs necessary to increase the level of environmental protection. As a matter of principle, investments aid aimed at ensuring that undertakings comply with EU standards already adopted and not yet in force are not eligible. A specific exception applies with regard to the transport sector, including maritime transport. The compatibility with the Treaty is confirmed with regard to investing aids to support (*i*) the purchase of new transport vehicles complying with adopted EU standards, provided that the acquisition occurs before those standards enter into force and that, once mandatory, they do not apply to vehicles already purchased before that date and (*ii*) the retrofitting of existing transport vehicles, provided that EU standards were not yet in force at the date of entry into operation of those vehicles and that, once mandatory, they do not apply retroactively to those vehicles.

On the other hand, Communication No C(2004)43 codifies the Commission Guidelines with regard to the application of State aid rules to maritime transport of goods and passengers[27]. The Guidelines could be relied upon in order to justify the support with public resources even of those transport services that, for any reason, would not be possible to qualify as public services and that, as such, would not be financeable under the SGEI legal framework. The Commission Guidelines pursue several purposes and, *inter alia*, allow Member States to use public resources to "*improve*[e] *a safe, efficient, secure and environment friendly maritime transport*" as well as to "*contribut*[e] *to the promotion of new services in the field of short sea shipping*". With regard to the short sea shipping, the Commission recognizes that "*launching short-sea shipping services may be accompanied by substantial financial difficulties which the Member States may wish to attenuate in order to ensure the promotion of such services*".

In addition to the fact that the aid must not exceed three years in duration and that funded service must become commercially viable after such period, the Guidelines establish other criteria

[26] Cf. Commission Regulation (EU) No 651/2014 of 17 June 2014 *declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty*, OJ L 187, 26.6.2014, p. 1
[27] OJ C 13, 17.1.2004, p. 3.

according to which the Commission could approve the public financing of the Project pursuant to Articles 107(3)(c) and 106(2) TFEU. Among the others, one should note the following criteria: the (*i*) service shall permit transport (of cargo essentially) by road to be carried out wholly or partly by sea and the (*ii*) aid must be directed at implementing a detailed project with a pre-established environmental impact, preferably concerning a new route.

Lastly, even under the Commission Guidelines, the aid shall be limited in order to cover the operational costs of the service and cannot exceed the intensity of 30% of such costs and shall be granted on the basis of transparent criteria applied in a non-discriminatory way to shipowners established in the EU, through a tender procedure in compliance with applicable EU rules.

ANNEX II

ITALIAN LEGAL ORDER

The third Scenario analyzed in the Report takes into consideration the case under which the maritime route covered by the envisaged transport service is extended across the Italian border and reach the Port of Ventimiglia. As a consequence, the Project would become relevant also from the view point of the Italian legal order. The intensity of the connection with the Italian legal order cannot but significantly vary depending on the actual modalities by which the Project will be developed. The potential decision to qualify (or not qualify) the envisaged maritime transport services as a public service (also) within the context of the Italian legal order seems to represent the most relevant factor under this perspective; and even more so if such qualification aims at easing the obtainment from Italian authorities of financial support for the development of the Project.

The lowest level of connection with the Italian legal order would occur if the envisaged maritime transport services (even if hypothetically financed by French of Monegasque authorities through public resources) would be carried out, as far as the Italian leg of the transport is concerned, by an economic operator entitled by reg. (EEC) No 4055/86 to operate under the freedom to provide services by an economic operator[28]. To a first approximation, and saved further checks, in this case the launch of the transport service would not be subject to any specific prior authorization by Italian authorities. Again as a matter of principle, the maritime transport services could be launched even without obtaining in concession an area within the relevant Italian Port (*i.e.*, the Port of Ventimiglia). Indeed, maritime transport services (including linear services) can be carried out simply by reserving in advance the possibility to berth within the relevant Port areas. Such bookings should be placed in due time with the competent maritime authority (namely, the so-called "Harbour Master") and they should also be submitted to the local public authority managing the Port areas owned by the State; for minor ports as the Ventimiglia's one, the competent authority is the local Municipality. These activities are usually performed by a ship-agent, who should be appointed to act in the interest of the ships used to provide the transport service. Maritime authorities usually enact specific regulations in order to regulate the modalities according to which ships can enter and berth within the Port area (so-called "*regolamenti accosti*"). Such regulations usually set specific regulatory frameworks concerning the ships that are used to provide liner services and which, therefore, require a lasting and well-organized regime ensuring the regular availably of berths over time. The feasibility of the above described scenario should be checked with the competent authorities of the Italian Port that will be reached by the envisaged maritime transport service (at the moment, the Port of Ventimiglia).

[28] Council Regulation (EEC) No 4055/86 of 22 December 1986 *applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries*, OJ L 378 of 31.12.1986, p. 1

Usually, cruise and ferries services are actually organized and performed according to the above described modalities. It is clear, however, that particularly articulated and well-structured liner services (which, for example, provide several trips each day, as it seems to be the case with regard to the envisaged maritime transport service, since the Project aims at meeting the needs of cross-borders workers) could be more properly managed by obtaining in concession a given Port area, which can be used exclusively by the holder of the concession agreement. The procedure is set by Articles 36 and ff. of the Italian Code of Navigation. Anyone, in any moment, is free to submit an application to obtain the concession of coastal (including port) areas which have not been yet granted in concession. The Public Authority who receives the application (for minor ports, the local Municipality; for larger ports, the competent Sea Port System Authority) shall publish the applications in order to encourage third parties to submit competing and/or opposing applications. If no competing applications are submitted, the competent Public Authority grants the concession if the application is compatible with the needs arising from the public use of the area, possibly after having examined the impeding circumstances described in the opposing applications. If at least one competing application is submitted, a comparative evaluation procedure is carried out during which the business and investments plans developed by the requiring undertakings are examined and evaluated. The Public Authority shall grant the concession to the undertaking which guarantees the most productive use of the area which is capable of meeting a more relevant public interest. As an alternative to submitting an application to obtain a Port area in concession, it would be also possible to negotiate with a subject which already holds a concession in order to obtain its consent to use the relevant Port area. In the present case, the relevant subject is likely to be represented by the company managing the Port of Ventimiglia on the basis of the concession granted by the competent Municipality. This point, however, should be further assessed.

As mentioned, the matter would become far more complicated if it will be decided to attempt to obtain the qualification of the envisaged maritime transport service as a public service, also for the purposes of obtaining financial support for the development of the Project from Italian authorities. As it has been better explained in the Report with regard to the relation between French and Monegasque legal orders, also in this case the agreement between the national authorities could be sought and occur at different levels and with different modalities. Form the legal viewpoint, the most complete and proper way to create a legal framework in which the Project can be developed would be of course to proceed with the execution of an international agreement. In this case, it seems that the competence would lie with the Italian central government: indeed, pursuant to Article 4 of Legislative Decree No 422/1997, the competence to execute international agreements concerning transnational public services of transportation of goods and persons falls within the competence of the State.

The legal regime does not expressly take into account nor regulate the case in which the coordination is achieved directly by the involved territorial bodies of the various Member States without executing a specific international agreement. It is worth noting that, in any case, Italian territorial bodies could certainly be part of a European Grouping of Territorial Cooperation (EGTC). In this vein, the competence seems to lie primarily within the former Province of Imperia, currently called “Ente di Area Vasta” of Imperia. On the one hand, the already mentioned Legislative Decree

No 422/1197 has conferred to the Italian Regions all the competences concerning the public local transportation, entrusting these territorial bodies, *inter alia*, with the powers connected to the administration of maritime services of regional interest; such services are defined as cabotage services taking place mainly within the territory of one Region (see Articles 10 and 3 of Legislative Decree No 422/1997). The Project would take place only within the territory of one Region (namely, the Liguria Region) and, therefore, it seems that it would fall within the scope of application of the mentioned disposition. Indeed, it seems tenable that the same regulatory treatment should be applied to the case where the extra-regional leg of the transport occurs in another region within the national territory and the case where such extra-regional leg occurs in another Member State. The opposition solution is likely to breach EU law.

On the other hand, and once that the competence of the Liguria Region has been established, one should note that Regional Law No 33/2013[29] (*i.e.*, the legal instrument by which the Liguria Region has implemented within its territory the Legislative Decree No 422/1997), has divided the regional territory in four areas (called "*Ambiti Territoriali Ottimali e Omogeni*") and has entrusted the government of each of these areas to the already mentioned "*Enti di Area Vasta*" (Article 9 l.r. No 33/2013). Pursuant to Article 6 of the Regional Law No 33/2013, the Liguria Region has maintained only the competences pertaining to (*i*) the administration of those transport services that require to be managed centrally at the regional level as well as to (*ii*) the coordination of the activities carried out by the "*Enti di Area Vasta*". Since the Italian leg of the transport service would entirely occur within the area falling within the territorial competence of the "*Ente di Area Vasta*" of Imperia, it seems tenable that it would not be mandatory to involve in the Project the Liguria Region. However, the involvement of the Region remains a possibility that should be carefully evaluated.

For example the involvement of the Liguria Region could prove to be useful in order to collect the funds necessary to support the development of the Project, especially if the attempt to include the envisaged maritime service among the public local transportation services will succeed. The potential involvement of the Liguria Region may become particularly relevant should the Ente di Area Vasta of Imperia not be capable of, or interested in, funding the development of the Project. In line with the relevant national legal framework, the Regional Law No 33/2013 distinguishes between different categories of public local transportation services, whose financial burden is borne by different subjects. Reference is made to (*i*) so-called "minimum services" (financed by the Liguria Region), to (*ii*) so called "additional services" (financed by the territorial bodies, such as the "Enti di Area Vasta" or the Municipalities) and to (*iii*) so-called "authorised services" (offered at market conditions by private operators). All these categories may be relevant for the purposes of the Project.

So-called "minimum services" are the services that are qualitatively and quantitatively adequate to meet the mobility demand of citizens and whose costs are borne by the Regions (Article 16 of Legislative Decree No 422/1997). Confirmed that the costs of so-called "minimum services" are borne by the Liguria Region, the already mentioned Regional Law No 33/2013 lists the reasons that

[29] Legge regionale 7 novembre 2013 n. 33, *Riforma del sistema di trasporto pubblico regionale e locale*, in Boll. Uff. dell'8 novembre 2013 n. 17.

can lead to the establishment of a "minimum service". Some of these reasons could become useful with regard to the potential funding of the Project. For example, the list include the necessity to meet the needs of (*i*) commuting workers and students, (*ii*) reducing traffic gridlocks and pollution. The inclusion of a transport service among the so-called "minimum services" usually occur during the enactment by the Regions of the so-called triennial programs of public local transportation services, where each Region generally individuate and establish (*i*) the network and the organization of the public local transportation services, (*ii*) the modal and tariff integration, (*ii*) the resources to the support investments, (*iv*) the parameters according to which fix the services tariffs, (*v*) the rules on the implementation and revision of public service contracts, (*vi*) the system of control of the services, as well as (*vii*) the criteria to reduce traffic and pollution. It would therefore be necessary to take contact with the competent offices of the Liguria Region in order to check their opinion with regard to the potential future inclusion of the envisaged maritime transport services in the triennial programs.

As already mentioned, in addition to so-called "minimum services", the Regional Law also provides the discipline of so-called "additional services", *i.e.* those services that integrate the minimum services and are financed by the territorial bodies other than the Region, such as the "Enti di Area Vasta" or the Municipalities (Article 5 of the Regional Law No 33/2013). Such disposition could therefore represent the legal basis that could allow the Ente di Area Vasta di Imperia to participate and also financially support the Project, whether the latter is interested and has the necessary resources to do so (in hypothesis, also with funds transferred by the Region following the execution of a so-called "Planning Agreement" ("Accordo di Programma"), pursuant to Article 12 of the Regional Law No 33/2013).

Minimum and additional services are entrusted by the Enti di Area Vasta (or directly by the Liguria Region, if a given service exceeds the territorial competence of a single Ente di Area di Vasta) through public procedures which shall comply with EU and national rules, as well as with the guidelines issued by the Authority of regulation of the transports (so-called "*ART*"). The terms and conditions according to which the service shall be provided are usually contained in the "contract of service" which shall be singed between the Ente di Aread Vasta and the economic operator entrusted with the task to provide the service. The mentioned Regional Law also deals with the issue of the tariffs of public local transportation services, establishing that tariffs shall be set at the regional level. The undertaking providing the service shall be capable of covering at least the 35% of the operative costs to provide the service (excluded the costs for the necessary infrastructures) with the revenues of the service itself. In any case, tariffs can be diversified taking into account several factors. For example, different tariffs can be applied depending to the time slot, the frequency or the economic conditions of the users. A difference can also be drawn between causal users and users living in the relevant territory.

Lastly, the Regional Law No 33/2013 also takes into account so-called "authorized services". Such category includes services that integrate the minimum services but are not financed through public resources (Article 5 of the Regional Law No 33/2013). No contract of service is required. A simple

authorization issued by the competent territorial body should be obtained. The category of the "authorized services" could therefore become relevant form the view point of the development of the Project in order to have the envisaged maritime transport service included within the public local transportation network of the Liguria Region. Since no public funding from Italian authorities is available in this scenario, however, the envisaged maritime transport service should be already sufficiently financed by the other public authorities involved (namely, the French of Monegasque authorities).