

Federal Ministry of Transport, Building and Urban Affairs
WS 25

Ulrike Schol
Robert-Schuman-Platz 1
53175 Bonn

Hamburg, March 20, 2009

German – Danish Dialogue on traditional vessels

Dear Mrs. Schol,

As previously agreed and in the context of the meeting to be held shortly with representatives of the Danish shipping authorities, I am sending you our statement and considerations as regards traditional vessels and their use of the waters in question.

By way of illustration I shall send you the relevant small scale chart of said section of the Baltic Sea by post which we hope will serve as an illustration of the arguments set out in this letter. In addition, I am enclosing excerpts from the current edition of the DSV (German Sailing Association) Cruising Guide on the Baltic Sea.

This letter contains the following four sections:

Flensburg Fjord Agreement

Danish and German waters - An integrated sea area for traditional sailing vessels

Recent Developments as regards the London MoU

Conclusions

Flensburg Fjord Agreement:

The Flensburg Fjord is the only sea area where Danish and German coastal waters are directly connected and thereby constitutes a unique case as regards the territorial waters of both countries.

The Flensburg Fjord draft agreement covers an area that would stretch inshore to Sonderburg along a defined line through the length of the Fjord without including the Als Sound adjacent to it. It would encompass roughly one thousandth of all Danish territorial waters. Traditional vessels with more than twelve guest crew or trainees sharing in the ship's expenses would continue to be excluded from sailing in all other Danish territorial waters (for the special circumstances of event visits in the framework of the MoU would, according to the interpretation by the Danish Maritime Authority (Søfartsstyrelsen) cf. below).

This limited Danish sea area would primarily allow for sporadic day trips starting from Flensburg. Conceivably, there could also be transfer operations from Flensburg to Sonderburg.

Vessels intending to carry out trips of several days' duration to Denmark in this cross-border area would have to limit themselves to stints in Sonderburg or stay in the Sonderburg Bight (Sønderborg Bugt) for several days.

At peak times an undesirable concentration of vessels could build up in the ports of Flensburg and/or Sonderburg.

Because of their size and as a result of the number of passengers allowed on them, traditional vessels such as the well-known steamer ALEXANDRA, whose home port is Flensburg, would not be covered by the Agreement. Such vessels would not be permitted to sail in the Danish part of that sea area neither for occasional daytrips nor for other types of journeys.

As explained in my most recent statement of February 3, our umbrella organisation for traditional vessels does not support the notion of specific regimes for individual sea areas. We simply do not see any rationale for such regimes neither from the legal point of view nor with regard to safety aspects – indeed, they seem to us to be counterproductive on both counts.

Danish and German waters – an integrated sea area for traditional sailing vessels:

In Germany the preservation, promotion and teaching of traditional seamanship is part and parcel of traditional shipping. It is enshrined in the law. Traditional vessels that offer journeys of several days' or weeks' duration are specially suited to practicing traditional seamanship. Sailing vessels clearly dominate traditional shipping of this kind and they would be particularly hard hit by the current restrictions introduced by the Danish administration. Larger traditional sailing vessels with more than twelve guest crew on board have to rely on the natural "interplay" of the Danish and German waters in the area. German coastal strips alone are altogether too limited as they cannot fulfil the requirements of such vessels as regards room for manoeuvre. These vessels were not conceived for restricted sea areas and excluding them from the Danish part of these waters would mean largely banning this type of operation in the Baltic.

Let me try and explain why this is so by illustrating some of the operational specificities of traditional sailing and sail training vessels:

The neighbouring coastal strips of Denmark and Germany in the area that stretches from Flensburg to Bornholm (my apologies to the Swedes for this imprecision) form a long sea corridor between the two countries in an East-Westerly direction. The Danish-German border roughly coincides with the central axis of this corridor. The Danish archipelago north of it and to the East of Jutland has three main straits, namely the Great and Little Belts and the Sound. They run in a North-Southerly direction and lie North of the aforementioned corridor. To the north of Funen and Zealand they unite to form the Kattegat which again extends along a North-South axis. At the Northern tip of Jutland the Kattegat becomes the Skagerrak (cf. small scale chart).

The entire area has been categorized as "coastal waters". It is part of Sea Area A 1 within the GMDSS system (covered by VHF).

During the summer season Westerly and Easterly winds predominate (cf. wind roses indicating wind direction in the Cruising Guide on the Baltic Sea). During a one-week sailing trip, for example, winds will

typically back from Southwest through West to North.

As traditional sailing vessels tend not to perform too well on close-hauled courses (no closer than approx. 70° to the wind) their preferred routes in this part of the Baltic Sea are naturally in the North-South direction or follow backing winds in circular movements respectively. Mostly, these vessels will make journeys that take them back to their port of departure. Preference for the North-South direction of sailing is also a result of the narrow nature of the Great and Little Belts and the Sound (Øresund) which offer excellent protection from rough weather and numerous spots for berthing and anchoring.

Sailing along East-Westerly routes has a number of weather-related disadvantages: Strong North-Westerly winds, for example, will lead to undesirable lee shore situations (where the vessel is sailing windward of land and is in danger of drifting inshore). This is why the number of ports and marinas along much of the German coastline on this stretch is limited. When sailing in an East-Westerly direction or vice versa, much of the valuable distance made good to windward must be wasted because of the predominant wind directions which make a return to the point of departure significantly more difficult. Often a planned route can never be pursued in the first place because of head winds. Further off to the East there are some possibilities to sail in the East-Westerly direction around the solitary island of Bornholm as that part of the Baltic offers sufficient room for beating windward. Those coastal waters are partly Swedish and partly Danish.

When beating to windward, a sailing vessel may be moving in and out of German and Danish coastal waters several times in the course of a day as dictated by rapidly changing winds which are a typical occurrence in the Baltic Sea. It is important that in their navigation efforts sailing vessels always have a choice between the coastlines of both countries when looking for a suitable port or marina. Fixed destinations and precise pre-planned times of arrival simply do not go together with the facts of life in the world of sailing.

Incidentally, this illustrates a particular problem for sailing vessels in the context of the requirements contained in the ISPS-Code. It also underlines how little “services on a regular basis” which are subject to passenger-friendly schedules have in common with the services offered by traditional sailing vessels.

It follows from what has been said so far that larger traditional sailing vessels need to be able to navigate freely in the area in question and that such room for manoeuvre enhances their safety in all weather conditions.

Referring to your mention of the exemption in the SOLAS-Convention in chapter I, rule 3 a (v) (“pleasure yachts not engaged in trade”), let me point out that in rule 3 a (iii) of the same chapter there is a specific clause, too, on traditional sailing vessels (“ships not propelled by mechanical means”) operating in international waters. Both these exemptions are also included in Directive 98/18 EG, Article 3, “Scope” – 2.(a)).

The following two sets of rules support this interpretation:

- 1) The SPS-Code 2008, where in Chapter I, 1.3.12.* it says: “Some sail training ships may be classified by the Administration as “not propelled by mechanical means” if fitted with mechanical propulsion for auxiliary and emergency purposes”.
- 2) The US Sailing School Vessels Act 1982: “(g) “sailing school vessels” means a vessel that is less than 500 gross tons ... principally equipped for propulsion by sail, whether or not such vessel has any auxiliary means of propulsion, ... “auxiliary means of propulsion“ means mechanical propulsion equipment not exceeding 2 hp for each displacement ton of the vessel”. (The restriction on the nominal power output of the auxiliary means of propulsion has since been dropped, cf. US Code Title 46 – Shipping, Subtitle II – Vessels and Seamen, Part A-General Provisions, Chapter 21 – General, Section (30).

On traditional sailing vessels propulsion by sail is the **principal means of propulsion** whereas the engine with which these vessels are normally equipped is an **auxiliary means of propulsion**. Unfortunately, this important aspect keeps being dramatically underrated in the various maritime contexts. **Through its latest amendments of the SPS-Code, however, IMO has evidently recognised the above fact.**

Recent developments as regards the London MoU:

Apparently, the Danish Maritime Authority (Søfartsstyrelsen) advocates the following interpretation of the London MoU which it would like to establish generally by way of a proposal to be drawn up together with the German competent authorities:

- In future the MoU shall only be applied in connection with maritime events in member countries.
- Journeys to and from such events shall not be covered by the MoU-rules, but only the event itself, which means that on the trip to the event location and back the guest crew on board a traditional sailing vessel must not exceed twelve. Trainees on sail training vessels must not be counted as crew.
- After having secured the necessary permits from the country in which the vessel has its home and from the host country, day trips from the event location in national waters are subject to authorisation by the national agency which will put a limit on the number of persons to be allowed on board. The host country authority reserves the right to carry out its own inspections, to control the number of persons aboard and to demand at its own discretion that requirements as regards additional equipment be complied with.

The terms described above were applied by the DMA last year on the occasion of a steamer festival in Denmark.

As a result, all of the German steamers invited felt this event was no longer of interest for them and declined to take part.

Let me try and demonstrate how the strategy pursued by the DMA is likely to affect also other maritime events which in the past have frequently been characterised by the participation of traditional sailing vessels of the most diverse type:

If the size of the guest or trainee crew aboard a traditional sailing vessel / a sail training vessel is limited to twelve persons, this will rob the vessel of large part of its ancillary crew which, however, is needed for efficient ship operation. These vessels are designed in such a way

that every hand is given a specific task within the operational routines on board.

Traditional sailing vessels cannot use their engine power as efficiently as other powered vessels can in that their rigging offers a lot more wind resistance. In fact, when motoring head-to-wind in heavy waves and wind, traditional sailing vessels will consume lots of fuel and can only achieve moderate speeds. If, for whatever reason, these vessels are required to reach port in a headwind direction, the usual solution is to zigzag on close-hauled courses with sails hoisted and the engine as an additional driving force – this mode of operation again actively involves the additional guest crew.

Most traditional sailing vessels can therefore not comply with the purposes required by their statutes if they must do without guest crews when approaching or leaving the event destination. Their statutory purposes overlap with the purposes that are pursued by the organisers of international regattas and other cross-border maritime events that have, in many cases, been instrumental in bringing about port events in the first place. During the events themselves it would be difficult to stage parades and outward bound journeys under sail as the additional guest crew trained for such performances would have had to stay at home.

Under such circumstances many an operator's interest and motivation to turn up for maritime events will be considerably reduced given the cost and logistics involved and the many nautical miles to be covered to event locations.

Also, it is obvious that such a restrictive interpretation runs counter to the original intention of the London MoU rendering it absurd.

To substantiate this claim, let me quote from Section 1.2 of the Memorandum which includes the unambiguous clause “calling at a port or participating in races, parades and festivals ...”. In addition, the intention of the Memorandum is clearly demonstrated by the annexes:

Annex II contains, among other things, a detailed break-down of minimum standards for crew qualifications according to coastal and high sea waters that covers all aspects of international shipping – not just for estuary navigation during daytrips and within national waters.

Annex II, Section 1.2, (more particularly the heading “fields of operation”) offers numerous examples of possible types of use of traditional vessels and clearly indicates an interpretation that is fundamentally different from the position held by DMA.

In your negotiations with your Danish counterparts, I should like to encourage you yet again to stick to the original thrust of the London Memorandum and not to digress from it as proposed by DMA. Putting a great deal of work into a joint version which would not be helpful, might end up being a futile effort.

Conclusions:

There is reason for concern that the increasingly restrictive interpretation of the provisions for traditional vessels by the Danish Maritime Authority will have effects that run counter to desired intentions of the Memorandum (cf. Danish statement on the occasion of the original signing of the Wilhelmshaven MoU):

- A restriction on the possibilities for traditional shipping where guest crews are closely involved in the ship’s operation and where the aim is to preserve traditional seamanship, the vessels themselves and where giving pleasure and teaching traditional seamanship is a central aspect.
- A trend to subject traditional vessels – wherever possible in terms of their technical and financial parameters – to the regime for modern passenger vessels under SOLAS and 98/18 EU respectively, whereby they would lose part of their material and immaterial power of attraction.
- An increasingly dominating role for passenger vessels that imitate some of the features of traditional vessels at major international maritime events. It is doubtful whether the character of such events can at all be maintained.
- A weakening of the economic incentives which have benefitted coastal areas, ports and marinas and local infrastructure through highly developed traditional shipping activities.
- A degradation of traditional sailing vessels in the sense that these would be limited to making short trips close to the shore thereby rendering the entire range of traditional shipping much less

authentic.

I hope to have amply demonstrated how the original ideas of the Memorandum, i.e. the well-intentioned promotion and preservation of our maritime heritage, threaten to be obviated by administrative practices in Europe.

Furthermore, my remarks are intended to underline the fact that traditional shipping in the sense of practised traditional seamanship can only unfold its full potential if it is literally given enough room at sea. For this to be the case natural sea waters must not be restricted by state borders. The unhampered unfolding of the possibilities of traditional shipping occurs mainly at sea. It is thus removed from public perception in ports and at major events. However, it is still the linchpin of the operational aspects of traditional shipping.

Referring to the exemptions under SOLAS and 98/18 EU described above and specified recently by the international community in the SPS-Code, there should, in our view, be a basis for the further enhancement of the London MoU and other regulatory instruments, as confirmed by the Council of Europe in its Recommendation 1486.

I wish you every success, Mrs. Schol, for the administrative meeting to be held shortly and would request – as last time around – that you relay my considerations to your negotiating partners from Denmark and that you may find them useful for your own deliberations.

Let me express my gratitude for your kind consideration.

Best regards,

Christopher Papperitz

GSHW Chairman