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To Ministry of Justice of Norway

Mrs. Marie KORSVOLL
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Marseille, April 28th 2022

Object : Consultation response (or Høringssvar) ref 2021/9496 and 21/4952 – MAKO

Dear Mrs. Korsvoll,

PONANT is a French ship owner and cruise company that has been operating for more than 30 years. Although it is active all over the world with a fleet of 13 small luxury vessels, it has gained recognition as a specialist in polar expedition cruises (Arctic and Antarctic). Its know-how owes much to the presence on board of highly qualified and trained expert naturalist guides. All are certified by AECO and IAATO and many of them live in Svalbard.

Because it serves rare and fragile destinations with a limited number of guests, PONANT has been engaged for many years in preserving the oceans and the environment where it sails. It has been at the forefront of industry efforts with measures and state of the art investments to minimize impact on water and air.

PONANT is very much concerned as well with safety, especially in polar settings. As an example, our company has organized a live SAR exercise in Svalbard in 2019 as well as the first ever live SAR exercise in the North Pole in September 2021. Our latest polar ship, the icebreaker *Le Commandant Charcot* is equipped to handle science and welcomes scientist teams on board versed in climatology, marine biology or ocean science.

PONANT has been present in Svalbard for many years and is an active member of AECO. Svalbard is a special destination for PONANT and its guests, attracted by the exceptional natural and wildlife wonders of the archipelago and by its History.

PONANT understands and shares the objective of developing sustainable tourism in such a fragile environment. We understand that growing tourism is a concern and we are sure that cooperation through AECO and Visit Svalbard already offers an efficient basis to ensure sustainable tourism and cruise as an ongoing process to the benefit of the local community as well as visitors. We stand ready to collaborate with the authorities and discuss necessary measures likely to ensure durable tourism operations and development.

Yet we are now concerned by some aspects of the new legislation being tabled by Norway in Svalbard. (Proposal for amendment of Svalbard Environmental Protection Act – and regulations/orders given with authority in this Act from the Norwegian Environmental Agency, with reference 2021/ 9496 ; Proposal for substitution of “Regulations related to tourism” with “Regulations related to field safety” and the proposal to apply the Package Travel Act in Svalbard,

from the Norwegian Ministry of Justice and the Ministry of Trade and Industry, with reference 21/4952 – MAKØ)

Our main concern stands with the duty to report operations to the Svalbard Tax office if operations exceed 30 consecutive days in Svalbard or Svalbard waters.

International ship traffic should be handled in accordance with international laws. We see at least two difficulties with the proposal.

First, there is no tax-exchange agreement between Svalbard and other countries so that foreign operators will be subject to double taxation. Yet on the other hand, Norwegian tax regulation ensures that Norwegian registered companies are not subjected to double taxation. This situation does not seem to be in accordance with the equality principle of the Svalbard Treaty.

Secondly, it has been indicated informally by Svalbard tax authorities that leaving territorial waters limits of Svalbard would not be accepted as a valid motive for ships to interrupt their 30 days presence in the Territory of Svalbard. This implies that authorities of Svalbard would bestow upon themselves the authority to have a say on the freedom of ships to leave the Territory and on the nature of their activities beyond territorial waters. This would certainly constitute a risk of breaching the Svalbard Treaty: as a matter of fact, Svalbard territory, including its territorial waters, are expressly defined by the said Treaty. Deciding upon ships activities beyond the territory would amount to unilaterally extending Svalbard jurisdiction.

Finally, we should emphasize that Registering tax payment for foreigners requires D-numbers for all that are non-Norwegian. The Norwegian registration system is not laid out to handle this nor are cruise companies equipped to face such administrative hassles.

As to the Guide certification system, PONANT is opposed to the proposal as presented although it supports that there should be a guide certification system. In this respect, we support AECO's advocacy for an approach where the operator, not the individual guide, has the overall responsibility for the operations and where certified guides can be one of several requirements to operators.

Our industry has not been involved in developing this proposal. Furthermore, it does not seem to value any of the existing and well-functioning educational and testing process such as AECO's Field Staff Standards or AECO's Field Staff Online Assessment, nor any types of international certification schemes or education that provide a similar level of competence.

Education of guides in Svalbard does not seem to supersede education one can get in other places while it is impossible to send all guides to Svalbard to undertake more than 23 days of courses. The costs for each guide's education in accordance with the proposal, will be between NOK 100 000,- and 200 000, which is not doable. The process needs to be restarted and working on a guide certification system from an objective of ensuring competence, and not ensuring positions or monopolies, is necessary.

We hope you may take into account our remarks.

Best regards

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