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**ABSTRACT**

In this paper, we want to analyse the level of disadvantage that comes from the island condition and the tools for its equalisation. We will refer in particular to the situation of Sardinia, the third largest region in Italy and the island furthest from its mainland in the Mediterranean Sea. However, the disadvantages resulting from the island status can be extended *mutatis mutandis* to all islands because they derive first and foremost from the insularity status. We will try to tackle the problems associated with insularity through a multidisciplinary approach: First, we identify and analyse the issues at stake from an economic point of view, then we try to contextualise them from a legal point of view, including a multilevel governance perspective. In the last paragraph, we will propose possible solutions for the mitigation of the disadvantages of islands.

**KEYWORDS**

Equality issues, Regulatory perspective, Adequacy and differentiation, Policies

**RÉSUMÉ**

Dans ce document, nous voulons analyser le niveau de désavantage qui découle de la condition insulaire et les outils pour leur égalisation. Nous nous référerons en particulier à la situation de la Sardaigne, la troisième plus grande région d'Italie et l'île la plus éloignée de son continent dans la mer Méditerranée. Toutefois, les désavantages résultant du statut d'île peuvent être étendus, *mutatis mutandis*, à toutes les îles car ils découlent avant tout du statut d'insularité. Nous essaierons d'aborder les problèmes liés à l'insularité avec une approche multidisciplinaire: d'abord, nous identifierons et analyserons les questions en jeu d'un point de vue économique, puis nous essayerons de les contextualiser d'un point de vue juridique, y compris dans une perspective de gouvernance à plusieurs niveaux. Dans le dernier paragraphe, nous tenterons de proposer des solutions pour atténuer les désavantages des îles.

**MOTS CLÉS**

questions d'égalité, perspective réglementaire, adéquation et différenciation, politiques

## 1. ISLANDS AS STRUCTURALLY DISADVANTAGED TERRITORIES I N TERMS OF ECONOMIC DEVELOPMENT POTENTIAL

Islands, especially when they are remote and with a small population, suffer from a structural disadvantage in terms of economic development potential. EU-RISLANDS (2013) points out that islands, compared to continental regions, have unfavourable common and objective structural conditions such as accessibility complexity, limited connectivity, excessive productive specialisation in a few sectors, and reduced internal market.

Ideas, market, knowledge, and technological innovation (i.e. the basic elements of economic development) spread mainly according to proximity in the geographical area. Territories contiguous to areas of strong growth take advantage of the development processes of neighbouring regions. On the contrary, if a territory is isolated and peripheral, it suffers from a structural handicap that has a permanent and cumulative negative impact on its development prospects.

In order to efficiently counteract the disadvantages of insularity, it is important to precisely understand their origins, especially because the economic and social consequences of insularity are often overlooked and poorly understood. The territorial discontinuity –an essential characteristic of insularity– is in fact a source of disadvantages that are not only significant but also very specific in a precise sense: It is now well documented that some of the normal disadvantages associated with “distance” or peripherality are significantly compounded by the condition of insularity.

This assertion is now supported by numerous in-depth and scientifically rigorous studies, that have measured in detail the consequences of insularity on economic development, the dynamics of innovation and trade. By way of example, at the request of the Chamber of Commerce and Industry of Corsica, a study was produced by Goodwill in June 2018 highlighting the various hidden costs of insularity on the profitability of businesses. The additional costs generated amount to around 20% compared to continental companies (Goodwill, 2018).

In the same way, recent studies by researchers at the University of Cagliari show that, given the existence and importance of the so-called *economies of density*, the costs of a logistic network –an essential component at the basis of the development of many economic activities, including large-scale distribution– or more generally of a service provided through distribution networks (e.g. methane gas) grow *for any given distance* in the presence of territorial discontinuity (even more so when this is large). As a consequence, it is particularly difficult for an island region to be reached by an efficient distribution network. For those living on an island, this normally translates into higher prices and more limited product ranges available locally, with obvious disadvantages for consumers and businesses (Cocco *et al.*, 2019; Cerina *et al.*, 2019).

Moreover, a study produced in 2014 at the request of the Administracion de la Comunidad Autònoma de les Illes Balears (Ferreira-Marques *et al.*, 2014) shows that, in the absence of the constraint associated with insularity, the gains from exports of goods and services produced in the Baleari islands would be 74% higher. The problems related to territorial discontinuity are particularly evident when considering the conditions of mobility and accessibility to and from the islands. Without adequate rules and resources, the inexistence of alternative transport systems to ship and areal connections, of through road and rail infrastructure, and of adjoining regions with which synergies can be achieved, translates into a real “cost of citizenship” in terms of prices, frequencies, certainty about the dates available for transfers and travel times. Moreover, the combination of territorial discontinuity and the limited nature of internal markets makes islands particularly exposed to the risk that, especially (but not exclusively) in the transport sector, services are provided by companies with dominant positions which, in turn, can be used against the interests of users.

The geographical discontinuity and the distance from the continent make it complex and very expensive to establish and maintain fixed and continuous connections, limit the choice between different alternatives, and increase costs, planning, and travel times.

Considering the maritime transport (because it is present on all islands, and bears the capacity to transport goods and passengers), and comparing the average travel time from Sardinia with the road transport time of any mainland region, it is found that Sardinia “moves further” away from the mainland to the extent summarised in figure 1 below.

To sum up, the costs of insularity are high and specific, associated with the presence of a territorial discontinuity and grow with its magnitude. In order to guarantee equal opportunities to Italian and European citizens living in island territories, specific interventions are needed both in terms of regulations and resources.

This point of view is at the centre of a series of documents approved by various European institutions, such as the European Parliament resolution of February 4th, 2016, opinions of the European Committee of the Regions (Maupertuis, 2017) and the EESC (Mallia, 2017), and joint declarations of the Conference of Peripheral and Maritime Regions (CPMR, 2018).

Figure 1. Sardinia: Geographical distance vs estimated distance based on comparative time of transportation  
Source: Regione Autonoma della Sardegna, 2015



## 2. UNEQUAL TREATMENT AND A SIGNIFICANT FAILURE TO GUARANTEE EQUAL OPPORTUNITIES TO ALL EU TERRITORIES

Despite these authoritative views, the production of European legislation and the formulation of EU policies have not so far produced adequate compensation measures to mitigate the specific handicaps of the insularity status. The result is unequal treatment and a significant failure to guarantee equal opportunities to all EU territories.

The main task of the condition of differentiated autonomy must therefore be to guarantee Sardinia and Sardinians equal opportunities and development conditions with respect to the regions and citizens of the mainland, to eliminate the handicaps of insularity and peripherality, and where this is not possible to promote financial and fiscal interventions to compensate for the disadvantages (Demuro, 2007). The condition of insularity reflects heavily on certain constitutionally guaranteed rights. The coessential geographical limits to the island condition affect the temporality of policy, freedom of movement, entrepreneurship, and ultimately the enjoyment of certain fundamental rights.

In order to move from an island, it is necessary to buy an air or sea ticket. Those who live in territories characterised by contiguity have a wider range of transport solutions, and in the end can always get in a car and go where they want, when they want. Islanders (or people who want to get to the island) must necessarily plan their journeys well in advance due to the limitations of means of transport, on the one hand, and the increasing costs of the service as the date of departure approaches, on the other. Do not just think about the possibility of going on holiday, which normally requires everyone to plan ahead of time. Think, for example, of the urgent needs that may arise from unavoidable work, health or family emergencies. The need to plan one's travels well in advance, deeply characterises the temporality of the island condition and ultimately the "humanity" of the enjoyment of fundamental freedoms. All this translates into a situation of profound inequality between citizens of the same state or the same continent.

Time also affects island life in other ways. Islands, particularly those targeted by beach tourism, are often characterised by concentrations of seasonal flows which make the difficulties in planning public policies objective and structural. Essential public services (transport, reception and assistance) need to be over-dimensioned in order to cope with the impact of tourism flows, which, however, is limited to a very short period of the year. This creates a disproportion that is difficult to manage between the daily life of small municipalities with a resident population of, for example, 3,000 inhabitants for 10 months a year and 100,000 in July and August. Islands seasonal temporality is accentuated and acts as a multiplier of the condition of insularity itself.

It is precisely for these reasons that the Treaty on the Functioning of the European Union (TFEU) pays particular attention to island territories, with a view to reduce the gap between the levels of development of the various regions of the European Union and the delay of the less favoured regions, among which are mentioned precisely the island regions (art. 174). However, as a distant island from the mainland, Sardinia suffers from a significant decline precisely because of this geographical condition. In order for article 174 to be effective, a joint effort would be necessary between Sardinia, the Italian state and the European Union to draw up a kind of implementing rule for that provision. To that end, it is necessary to construct an institutional path aimed at recognising the condition of insularity.

Article 349 TFEU expressly lists some of the outermost regions of the European Union (and Sardinia is not one of them) for which special conditions and specific facilitation measures are laid down because of geographical, climatic and economic factors that slow down or impede their development.

A first significant opening with respect to the aforementioned facilitations was made with the ECJ judgment of September 6th, 2006 (C-88/03), concerning the reduction of personal and business tax rates applied to the Autonomous Region of the Azores. The Court of Justice of the European Community (CJEC), with the subsequent judgment of September 11th, 2008 (joined cases C-428/06 to C-434/06), has better clarified the terms of the matter.

According to the above-mentioned Community case law, a region, in order to be able to establish tax advantage measures, must comply with three fundamental requirements: 1) institutional autonomy with respect to the central government; 2) decision-making autonomy; 3) financial autonomy. The economic consequences of the facilitative measures applicable to the entities present in the territorial entity must not be compensated by directly related aid from the central government. Sardinia, on the basis of these principles, could create "autonomous" facilitative measures, provided that it fully assumes the economic consequences (financial autonomy), guaranteeing the balanced budget referred to in Article 2(1)(b) of the EC Treaty. 42, paragraph 10, of Decree Law no. 133 of September 12th, 2014, converted with amendments by Law no. 164 of November 11th, 2014.

### 3. FULL RESPONSIBILITY AND AUTONOMY IN THE BUDGET MANAGEMENT

In summary, Sardinia may be fully responsible and autonomous in the management of its budget, provided and for as long as it maintains a balanced budget (Demuro *et al.*, 2013).

In this sense, the elements of financial and decisional autonomy, necessary (among others) according to the CJEC, are accentuated in order to consider compatible any tax and economic benefits introduced by a single territorial authority. The Region, as required by the Community jurisprudence, would become, from the fiscal point of view, a “State within the State”: the national average rate (applicable to the whole territory) would no longer be the reference parameter against which to assess the scope, general or particular, of the effects of tax reductions. Instead, the reference framework for the assessment of the advantage measures would become the regional territory and not the state territory. Sardinia could therefore establish economic support measures of various kinds to cover what it could and should benefit from greater economic availability precisely because of the desired concrete implementation of Article 174 TFEU on insularity.

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