

# EU Ports Policy Review

## Public Hearing of 18 January 2013

### DISCUSSION PAPER

*This discussion paper consists of two parts: Part I summarises the main reasons that, in DG MOVE's preliminary assessment, would justify the adoption of certain measures for ports of the trans-European transport network (TEN-T). Part II explores possible policy measures, intentionally in a broad manner, for addressing those challenges. The views and measures outlined do not prejudge the conclusion of the Impact Assessment, nor the final decision by the Commission.*

#### **PART I – MAIN CHALLENGES**

##### **Scenario 2020-2030**

1. Maritime trade and port activities may remain weak in the short term (2014-2018), with a possible overcapacity on certain segments. But forecasts predict return to steady port traffic growth towards 2020, with changes in volumes and types of cargoes, size, design and propulsion systems of ships, cargo-handling and logistic technologies and ICT developments having huge impact on ports. Ports failing to modernise could be left behind.
2. Sea-trade growth is a necessity for Europe's economic recovery and the development of short-sea-shipping is needed as part of intermodal transport solutions offering alternatives to road transport and contributing to sustainable transport. However, ports risk not fully playing their role in the supply chain because of poor network integration, problems of congestion and decline of short sea shipping in face of strong competition from road transport (leading to congestion and saturated intra-EU land corridors).
3. Further developing the efficiency of the gateway function of ports will require: (a) better connections with the hinterland; (b) improvement of the use of existing capacities by increasing port performance and (c) provision of new port infrastructure.
4. In respect to (a), the new EU guidelines for developing the TEN-T and the Connecting Europe Facility will help Member States to improve the connections with the hinterland. Addressing the two other challenges (b) and (c) would require a framework that encourages the modernisation of ports procedures and services and can better attract capital investments and human resources to ports.

##### **European dimension**

5. Those challenges are a matter of concern for national regional and local authorities. But they are also transnational by nature when it comes down to TEN-T ports, both the core network ports and the comprehensive ports, as part of an efficient hub-and-spoke system. Unfair practices in a port may harm neighbouring competing ports and/or the business opportunities of port service operators of other Member States. Better port performance in other Member States can further facilitate intra-EU trade with them and reduce the negative externalities on its own network (e.g. congestion).

##### **Modernisation of ports, attracting investments**

6. By optimising business processes and simplifying administrative procedures, TEN-T ports could handle more ships, cargo and/or passengers with the same infrastructure. By further improving the reliability, flexibility and efficiency of port services, they could also accommodate more short-sea shipping traffic. The completion of the Single Market for ports will provide a fair level playing field thus unleashing port modernisation dynamics.
7. This however cannot happen with unjustified market entry barriers, unnecessary administrative burden and unclear rules governing the provision of services, in particular

those provided under exclusive or special rights granted to particular operators. Legal uncertainties are a source of discomfort both for incumbent operators and for new operators willing to enter their markets. Modernisation of ports, investment flows and creation of new businesses and employment are therefore handicapped.

8. Investments in port infrastructure, terminal operations and connectivity of ports are of crucial importance to maintain EU port performance levels. Overall funding needs for ports (infrastructures, equipment and connections) could easily exceed € 100 billion in the next 20 years. Meanwhile, public funding is drying up. Inevitably public investments will have to be better optimised (see the report of the European Court of Auditors 2012<sup>1</sup>) and private investments encouraged (ports are part of a long-term growth sector).
9. Transparency in the use of public funds and the need for a level playing field for inter-port competition is a repeated concern for all stakeholders. They seem to see transparency as a way to ensure the correct allocation of public resources and reduce the risk of State aid incompatible with the internal market. This is not surprising since some 30-40% of the ports of the core network do not fall in the scope of Directive 2006/111/EC on the transparency of the financial relations between public authorities and public undertakings. Moreover, without separation of accounts (statutory vs. commercial activities) port authorities operating specific port services can cross-subsidise the activities related to port services in a non-transparent way and thus disrupt the level playing field.
10. Furthermore, ports are not always allowed to define their own infrastructure charging policy. Charges for the use of infrastructure may not be linked to costs and contribute to an efficient allocation of resources to finance the maintenance and/or construction of infrastructure. The lack of transparency in the setting of charges may lead to unjustified discrimination. Price signals rarely incentivise users to take into account their external costs (e.g. environmental costs). Moreover, in a period of faltering economy and overcapacity in certain market segments, there is an increased risk of unfair inter-port and intra-port competition.
11. In addition, lack of coordination of public investments in port capacities, even within the same Member State, may lead to duplication of facilities, waste of funding resources or higher uncertainties related to the social and economic returns of investments. Such situation is also detrimental for encouraging Public-Private Partnerships.

### **Creating new jobs**

12. Finally, port growth, investments and jobs come together. European ports represent an opportunity to generate employment and create new, quality jobs, both inside and outside the port, ranging from vehicle drivers and crane operators to ICT specialists and commercial executives. Successful ports attract industrial and commercial firms; marine services generate high-end employment. The quality of the social relationships, of the working environment and of the human resources policies are key factors for the development of TEN-T ports.

## **PART II – POSSIBLE MEASURES**

### **Fair market access**

13. When applied to ports, the principle of freedom to provide services should encourage innovation and better quality and efficiency of port services. However, there may be objective reasons to limit the number of suppliers within a port, such as the scarcity of port space. Additionally, there may be reasons of public interest (services of general interest) linked to safety, environment, security or nautical accessibility which can warrant

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<sup>1</sup>See <http://eca.europa.eu/portal/pls/portal/docs/1/14050737.PDF>

the granting of exclusive or special rights to one or a limited number of port service operators. In such cases, the recourse to open, transparent and non-discriminatory procedures when selecting operators for large contracts can provide incentives to improve performance of operations, ensure legal certainty for *all* interested parties and lead to more efficient use of scarce land and other public resources.

14. Without prejudice of the application of the future directive on concessions to the port sector, Single Market principles, i.e. open, transparent and non-discrimination procedures when granting market access to commercial port operators should apply in all TEN-T ports.

#### **Avoiding abuses by internal (public) operators or operators with exclusive/special rights**

15. Public authorities may decide to operate themselves or to entrust public undertakings that they control to operate certain port services, for instance technical-nautical services, without having recourse to open tendering procedures. This possibility has indeed been recognised in other areas (e.g. Regulation 1370/2007 for land passenger transport). However, in such cases, the activities of these internal (public) operators are confined, so that they do not compete on an unequal basis with other providers. There can also be other cases in which a specific operator is granted exclusive or special rights directly without an open tendering procedure. In these cases, abuses leading to unfair pricing and/or prejudicial to the quality of service should be avoided.
16. The preliminary view of DG MOVE is that measures related to confinement of internal (public) port service operators should be envisaged. In those cases and in the case of exclusive/special rights awarded without open tendering, measures requiring transparent definition of the scope, extent and conditions of the (public) service in question, fair pricing, procedures for complaints, and consultation with users should be envisaged.

#### **Administrative simplification and intra-port coordination**

17. Users of port services – sea side and land side – must cope with a multiplicity of actors and administrative procedures. The lack of coordination of operators providing different port services and the superposition of port administrative procedures often create a specific administrative burden for users. As possible supplementary measures to achieve simplification of port operations and procedures for users, stakeholders have suggested measures such as a ports' users committee to be consulted by the port authorities and/or an administrative simplification action plan in each port. DG MOVE is of the view that this type of measures could make sense for TEN-T ports or at least to core network ports.

#### **Financial transparency of public funding**

18. Transparency in the financial flows from public authorities to ports could be achieved by applying the provisions of Directive 2006/111/EC on the financial transparency of public undertakings to those TEN-T ports not covered yet (i.e. with an annual turnover < €40 million). As to the port services carried out by ports, a separation of accounts enabling the identification of financial flows linked to the port services and those linked to the port authority's infrastructure management / regulatory functions might suffice in line with the principle of proportionality. But it can be argued that a functional/legal separation would be easier to enforce and more effective in ensuring transparency and a level playing field.
19. The preliminary view of DG MOVE is that the provisions of Directive 2006/111/EC should apply to all TEN-T ports (or at least to core network ports) and provide the desired transparency between public authorities and ports. Moreover, a separation of accounts (or, alternatively, a functional and/or legal separation) between statutory functions and commercial activities should be envisaged.

## **Port Infrastructure Charging**

20. The EU strategy to internalise external costs from transport, which was confirmed in the 2011 White Paper, has called for applying long term marginal cost charging in all transport modes. Steps have already been taken to introduce common principles of transparency, non-discrimination, cost-relatedness and environmental modulation of infrastructure charges in the road, rail and airports sectors. Similar steps in the port sector could help address the challenges identified in part I.
21. DG MOVE is of the view that, as a contribution towards the goal of more efficient charging, ports should be in a position to set themselves the structure and level of port charges. Those should ideally be established in relation to the long-term marginal costs, with the possibility to recover investment costs and take account of the ports' strategic planning. Transparency requirements on the method used to set price should at least be introduced as a first step. Certain price discrimination, e.g. some commercial rebates for attracting traffic from other ports, may also be potentially incompatible with the TFEU principles.
22. Moreover, taking account of existing good practices in various EU ports, environmental performance rewarding schemes should be encouraged or introduced to incentivise the recourse to less polluting and more energy efficient ships and fuels, including, for example, gas and shore-side electricity.

## **Coordination between ports**

23. To avoid duplication of efforts and a better visibility of possible return on investments, some form of coordination between ports can be introduced, ranging from a mere exchange of information on planned investments to a more integrated and coherent planning. Possible measures suggested by stakeholders include the entrusting of an existing European body with some role of coordination, the establishment of strategic integration plans per TEN-T corridors, and/or the establishment of strategic port development plans at national level.

## **Inland ports**

24. The economic fundamentals, governance models and transport features of inland waterways ports differ from those applying to maritime ports. Some of the issues of maritime ports could be relevant for some inland ports, while others would be specific to the latter. DG MOVE considers that an ad-hoc investigation focused on the particular features of the inland waterway transport mode is required: this work will be carried out in the context of the revision of the NAIADES programme.

## **Issues related to port labour**

25. The 2001/2004 “port packages” proposals were rejected by the European Parliament notably because of provisions on the organisation of port labour. The 2012 consultation of stakeholders has shown that important social tensions persist. Taking account of the soon to be established European Social Dialogue Committee, issues related to port labour regimes and dock labour practices, health and safety as well as training and qualifications will be discussed, as appropriate, in the context of the social dialogue.

## **Scope and monitoring**

26. It has been suggested that while EU measures should in general apply to the ports of the TEN-T, but more precise and specific issues could be considered for core ports (82), in accordance with the principle of subsidiarity. The question also arises as to whether and how to improve the information available at European level for policy makers and for port operators to monitor and evaluate their actions.