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EUROPEAN PORTS POLICY Submission by ECSA

INTRODUCTION

The European Community Shipowners' Association (ECSA) has been closely involved in the discussions on a European Ports Policy since the publication of the Green Paper on Sea Ports and Maritime Infrastructure in 1998.

Improving the efficiency of port services was already identified in the mid nineties as one of the main objectives of European Port Policy. Today this improvement is even more urgent and necessary due to the high increase in maritime transport demand which has resulted in congestion in many European ports as well as in key hinterland connections.

Following the rejection of the two Directives on market access to ports services by the European Parliament ECSA welcomed the launching of a consultation process on a European ports policy and has actively contributed to the six workshops that have been organised in this respect.

Throughout the process of discussions on a European ports policy ECSA has reiterated the importance of efficient ports, port services and hinterland connections for the European economy that is strongly relying on shipping services. Especially as it has become increasingly obvious over the last years that with the continuous and high growth patterns in maritime trade, transport nodes, and especially hinterland connections and ports, are increasingly reaching saturation point of their internal infrastructures and in high peak times are even sometimes over-reaching their existing capacities.

Today it is of utmost importance to ensure the possibility to increase both port capacity (quays, terminals and navigation channels i.e. dredging) and road and railway connections at least in parallel with transport demand. Otherwise maritime transport would not be able to contribute to the building of a sustainable transport system at the growing pace which is expected for it in the EU Transport Policy.

Increasing infrastructure capacity, being totally necessary, takes time, requires huge investments for which financing is not always available and is too frequently blocked or delayed by local environment considerations. The European Ports Policy should, as a matter of priority, be focussed on removing these obstacles.

At the same time it is equally essential and of the same priority to ensure that we get the best from existing capacity by increasing efficiency, in order to allow time for infrastructure increases without reaching a total collapse.

ECSA believes therefore that the priority targets for a European Ports Policy should include:

- Facilitating the increase of port infrastructure and hinterland connections.
- Stimulating an enhanced efficiency of all port services.
- Clarifying the rules for intra and inter port competition.

In this context a modernisation of port services is an essential step to further improve the position of maritime transport in the supply chain and in particular for the promotion of short sea services. It will increase efficiency and contribute to the overall effort to make the EU economy more competitive as agreed in the Lisbon Declaration and reconfirmed continuously by the EU Institutions.

Taking into account the themes of the six workshops ECSA summarises hereunder its key points for a European Port Policy.

I. SUSTAINABLE DEVELOPMENT OF PORT CAPACITY AND ENVIRONMENTAL ISSUES, GENERAL TRANSPORT POLICY ISSUES, INTER-PORT COOPERATION

Ports are essential nodal points in international transport chains. They must handle the bulk of international trade, which will continue to grow at fast rates. Ports, which serve an environment-friendly and low-cost mode of transport, are thus of highest significance for Europe, in terms of foreign trade and in terms of employment they generate.

Securing the necessary development of port capacity is one of the key priorities for ship-owners and needs to be taken fully into account when drawing up and implementing a (European) Ports Policy. Any review of port capacity and future port requirements needs to be made at local, national and EU level in conjunction with current and future requirements of hinterland connections to avoid bottlenecks developing.

As the International Chamber of Commerce, for example, notes, in many ports in Europe, containers and other shipments are piling high because of transportation bottlenecks. This means costly delays, missed berthing slots in subsequent ports, higher fuel costs to make up schedules, readjusted schedules, missed ports, missed feeder and train connections, changed documents and penalties.

Access roads and intermodal connections are insufficient to ensure the swift and efficient transportation of containers that have been unloaded in terminals. Inland waterway barges and feeder ships compete with ocean vessels for berths. Access roads of ports and highways are congested, as are the railways. Problems in one region affect the performance of ports, waypoints and carriers in all modes along the entire supply chain, all incurring and causing additional costs.

Delays have serious effects on just-in-time distribution systems, which seek to reduce inventory and distribution costs, and on lean production techniques, which seek to cut down on sources of waste in manufacturing. Delays result in huge costs for importers and a serious lack of predictability and reliability in supply chains.

Different projections indicate that maritime transport is to grow at higher rates. Studies on traffic forecasts such as the Traffic Forecast Analysis on the TEN-T, taking into consideration the external dimension of the Union (http://ec.europa.eu/dgs/energy_transport/tenders/doc/2007/s58_070773_specifications_en.pdf), are helpful and should receive more attention.

To accommodate such a growth and to remedy the present congestion, significant investments in ports and hinterland infrastructure are urgently required.

It is therefore evident that for the shipping industry expansion of ports and hinterland connections should be a priority item of the new European Ports Policy. Otherwise there will be not only economic but also negative environmental effects, as maritime transport would be unable to play the increasing role which is expected of it in the design of the European Transport Policy with the objective of getting a more efficient and sustainable European Transport system.

A right balance should therefore be found between environmental concerns for protecting certain local areas, the promotion of Short Sea Shipping and the economy in general.

Different interpretation of existing legislation e.g. Habitat and Birds Directives have created serious delays in the development of new terminals and created legal uncertainty on initiatives on port expansion.

In the MTCP (Maritime Transport Coordination Plan – Portus 2010) study made on request of the Commission a mixture of policy related useful recommendations have been made in this context such as:

- Better and more reasonable implementation of the existing legal framework (Habitat, Birds and Water Framework Directives) together with clear interpretation guidelines.
- Reinforced legal status of port development projects e.g. TEN-T status, projects cleared under state aids rules, national integrated coastal zone management, etc.
- Encourage high standards for environmental management e.g. sector driven initiatives such as ECOPORTS (ESPO).
- Amendments to ongoing legislative proposals e.g. air quality, waste Directive (dredging material). In this respect it should be noted and accepted that being key industrial areas ports are by implication subject to more emissions than other areas.

Adequate waste reception facilities should be available with easy access to facilitate and encourage usage; the study being made by EMSA should lead to an improvement of the present position and methods.

ECSA expects policy makers to be fully aware of the indispensable nature of ports and hinterland connections and encourage their expansion towards more efficiency and a sustainable supply chain system. This should also be taken into account in the ongoing discussions on spacial planning. This should not lead to centralised EU planning. The bottom up subsidiarity principle should apply in this respect.

II. PORT SERVICES (FAIR COMPETITION, CONCESSIONS, POSITION OF PORT AUTHORITIES)

The Role and Status of Port Authorities

As expressed by many during the Workshops there is a variety of port management systems in Europe. An overall European model for port authorities would be difficult to attain and would have little or no added value.

Whether port authorities are a public entity, a landlord, or a privatised business is not an issue. What is important is that port authorities can act in an autonomous way avoiding thereby superfluous bureaucracy. There should also be transparency on the role of port authorities. If port authorities would, next to their standard tasks offer other economic services, there should be transparency through separate accounts for these activities. It should also be left to Member States to decide on the scope of economic activities that public authorities can perform. The rules on free market access should also apply to these economic tasks.

Tenders/Concessions

In principle there should always be more than one service provider within a port to avoid monopolies occurring. If there is a limitation on service providers a normal system of tenders/concessions should apply. In most cases a kind of tendering/concession system already exists in most ports. As long as these are fair, transparent and relevant, an imposed harmonised detailed (bureaucratic) system on tendering does not seem necessary. Indeed tendering procedures should have a positive effect on the efficiency and costs on the port and the port users. The whole process of tendering should ensure that the only the most efficient service providers with highly competitive price structures are successful.

Where there is no limitation to the number of service providers, there is no need to limit in time authorizations and/or concessions or to introduce unnecessary bureaucracy. Where competition "in" the market is limited and concessions have to be imposed concession periods should be set in such a way that they attract investments and also encourage competition.

Legal Instruments

During the exchange of views at the Workshops the vast majority of stakeholders expressed the view that at this stage "soft law" would be preferred rather than a new Port Services Directive. ECSA shares this view and leaves it to the Commission to consider in which way a soft law approach can be established such as through an Interpretative Communication, Guidelines or some other form of guidance.

III. PORT FINANCING (STATE AID, TRANSPARENCY OF ACCOUNTS, FINANCIAL AUTHORITY OF PORTS, TARIFICATION)

State Aid

With regards to State Aid and possible State Aid Guidelines, ECSA wishes to refer to the principles laid down in the Commission Vademecum of 2002 and subsequent Court decisions.

In this context we wish to stress that the four categories defined in the Commission Paper as prepared for the Hamburg Workshop are different from those mentioned in the Vademecum of 15.01.02.

In the Vademecum “locks” were put under category 1 notably “Port access and port defence infrastructures”. It is therefore evident that locks should be moved to category 1 “Basic Infrastructure” in this paper as well.

Public funding for basic infrastructure, open to all, should not be considered as state aid. Basic infrastructure is clearly a public good and should be dealt with as such. It is often related to specific local and geographical circumstances. Infrastructure that allows sea and land access to a port area including maritime access and maritime protection works such as: dikes, breakwaters, locks, and other high water protection measures, navigable channels, including dredging and ice-breaking, navigation aids; and land access connections to general transport facilities and infrastructure for utilities necessary in the port area clearly belong to this category. Also investments made for general port security (like overall port fencing, general security services etc) should be dealt with in a similar manner.

Existing state aid principles include that state aid can be a problem if it is to the benefit of one specific party only. If all parties benefit from it the picture becomes different.

State aid guidelines should establish some principles to avoid distortion of competition between ports taking into account all relevant factors including the historic developments of ports where financing has been granted in the past and for ports that are still in a development status and still need financing. Possibly transitional periods should be established.

Financial Autonomy/Transparency

As expressed under the previous item ECSA feels that there is no need for a common European model for port management. Port Authorities should be in a position to manage their port on an autonomous basis.

In this context transparency on financial relations is necessary. This is particularly so if the port authority would have public functions and commercial activities at the same time. Transparency is required irrespective of the legal status of the port.

Port Tariffs

Port tariffs should be transparent, relevant and freely negotiable. Shipowners should be charged only for those services that they actually use, the charge for a service should be based on the cost of providing it, and a port should be capable of demonstrating that this is so. Market forces should achieve this, given a competitive environment – and the setting of tariffs should therefore be treated as a commercial issue and left to individual ports.

An overall EU structure of port tariffs would be unworkable and create an unnecessary bureaucracy. State aid guidelines coupled to transparency would make an EU framework on tariffs superfluous. Problems with tariffs based on GT for ships built with high sides (ferries/roros) should be solved on a commercial basis by promoting best practice.

IV. HINTERLAND CONNECTIONS, LOGISTICS AND ADMINISTRATIVE SERVICES

As mentioned under item I there is an urgent need for investing in and improving on hinterland connections. Maritime transport is a key player in the supply chain offering multimodal services on a co-modality basis. Ports are an essential nodal point in the supply chain and should consequently have sufficient and efficient hinterland connections using all transport modes. The Trans European Transport Networks (TEN-T) should give a priority to hinterland connections to/from ports.

The liberalisation of cargo rail services that has been launched in the recent years should be further enhanced. The Nades action programme for inland waterway transport should be implemented. The necessary work on infrastructure improvements should be speeded up.

The development of logistic chains should be left to the market. Bureaucratic measures such as quality labelling by authorities will have the opposite effect of what is expected from it. The role of the authorities is to create the right framework in which logistics can develop. The bottleneck exercise launched by the Commission can be helpful in this respect if pursued vigorously.

Improvements can certainly be made on reducing administrative burdens that exist today. Particularly customs procedures for transport of intra-EU goods by short sea shipping should be reduced to the same level as for transport overland.

V. LABOUR ISSUES, CARGO HANDLING, TECHNICAL-NAUTICAL SERVICES

Labour Issues

Labour issues have rightly or wrongly been the most sensitive issue in the previous discussions on a European Ports policy.

Proper qualification of all involved in port services is without doubt a must. However, the qualification criteria should be relevant. At the same time the four Freedoms of the Treaty are also applicable on port services. In this context the principle that service providers in ports have full freedom to engage qualified personnel of their own choice without imposed conditions except relevant conditions on qualification,

safety, and national social legislation in line with the Treaty, should be fully respected. Existing arrangements that have been questioned should be assessed against existing EU legislation.

Qualification criteria can be left to the relevant National Authorities, however, a dialogue between providers and users should ensure that the criteria are relevant and transparent.

Social Dialogue

From the discussions in the six Workshops, ECSA understands that a social dialogue will be established for port services. This is a normal evolution as we have had a social dialogue with European seafarers for a long time. However, ECSA wishes to stress that if port policy issues, as presently on the agenda, are discussed the users of ports and port services should de facto always be directly involved.

Cargo handling

It is evident that cargo handling should be subject to normal market conditions and competition. This of course relates also to item II on tenders and concessions as well as to labour conditions as mentioned above. Service availability is another issue and should also be available 24/7/365 days where appropriate. However within this remit there should be enough flexibility that vessels' actual working schedules (commence and completion times) are taken fully into account to ensure that payment is only made for actual services rendered and effective working time incurred.

Towage

Towage is in general a service where market principles are applied and limitations on the number of operators should be avoided wherever possible. Nevertheless, where a limitation of numbers of operators is justified, it should be reiterated that there should be open access for competitors and that reasonable tender/concession periods should be applied in case of limitation to one operator, which should in principle not happen.

Safety arguments should not be abused to impose mandatory services. Any towage guidelines developed by the relevant authority must be clearly derived from the port's safety management system and objective contestable safety risk assessments.

The necessity to take tugs and the number of required tugs should remain at the discretion of the Master / pilot relationship and consideration given to the vessel's design, equipment and technology (including propulsion, steering and bow/stern thruster propulsion systems). Towage should not be arbitrarily imposed. As for other commercial services towage rates should be relevant, reasonable and negotiable.

Mooring

In principle, limitations to the number of operators should not exist. However, where there is such limitation, there should, as for towage, be free access and reasonable tender/concession periods, which should be both frequent and transparent. As for other commercial services mooring rates should be relevant, reasonable and negotiable and for mooring services to be used on a case-by-case basis and not imposed. Vessels' on-board technology should also be taken into account when considering mooring services.

Pilotage

The shipping industry strongly advocates that all port services, including pilotage should be part of a European Ports Policy aiming at modernisation and more efficiency.

It is accepted that safety requirements play an essential and fundamental role in the work provided by pilotage services. The safety argument should not unduly justify monopolies. Shipowners believe that safety is best served by efficient pilotage services. In this respect it is important that a proper risk assessment, involving all relevant stakeholders, takes place when determining the use and the tasks of pilotage services. Practices of imposing services without an accepted risk assessment process should be stopped.

More efficiency in pilotage services will improve safety as well in ports as in waterways giving access to ports and enhance the use of pilotage services.

Clarity should be created on the position of pilotage in the new European Port Policy. Hence the following suggestions:

Safety Control Authority

Member States should designate an existing or new Safety Control Authority (independent from service providers) to monitor and control the service provider(s) and ensure that safety remains paramount at all times. This authority should be empowered by the respective government with a mandate to include the responsibility to ensure the highest standards required for the safe operation of ships in its waters.

The safety risk assessment should be developed in joint discussions between the Port Authorities, Pilots and port users.

This authority should be able to handle formal complaints and appeals on an independent basis. It should have the authority to set common standards whilst taking into account cost effectiveness, to monitor the performance, control tenders and undertake the licensing of the service provider and establish standards for granting Pilot Exemption Certificates (PECs).

Pilotage infrastructures such as transfer areas for pilots' transfers should be made accessible to all providers of pilotage services. This could be achieved by privatising these particular areas independently from all pilotage service providers.

Tenders should take into account the safety and service standards set by the Safety Control Authority and should be composed in such a way that cherry picking to the detriment of overall services provided is avoided.

PECs

The possibility to obtain Pilotage Exemption Certificates (PECs), on the basis of objective and transparent criteria, should be enhanced and the process should be relevant and appropriate. English should be accepted as a valid language for PEC exams. Cumbersome procedures refusing personal certificates for the same type of vessels and service should be abolished.

The basic premise of pilotage is that the pilot “advises” the master of the vessel on the basis of his specific knowledge of the relevant area. However the master retains total command of the vessel at all times and can question or reject the pilot’s advice at any time. PECs are gained through proven experience and relevant examinations. The PEC establishes that the PEC holder has sufficient local knowledge and experience and also demonstrates that the PEC holder can substitute the local pilot whilst ensuring that the vessel can safely proceed into and out of the area.

At the moment every Member State has their own procedures and criteria for granting PECs. ECSA believes that as a first step the Commission services should conduct a thorough review of these procedures and criteria to identify best practice. It should include but not be limited to the general recognition of the use of the English language for exempted vessels’ masters.

Qualification

It requires a re-think on whether the requirement for a Captain’s license should be a pre-requisite for becoming a pilot. The central role of the pilot is to offer his knowledge of the local conditions in entering and departing the port coupled with his ability in handling / manoeuvring vessels in the port area. As long as candidates are well trained and examined then the Captain’s license is secondary to these main and fundamental requirements.

Public Service Status

As mentioned above the central function of a pilot is to advise the master of the vessel on the basis of his specific local knowledge of the relevant area. However the master retains total command of the vessel. This is not a public service activity.

If the pilots would be entrusted with public service tasks (e.g. assisting in Port State Control activities) this is to be considered as public good for which the costs should not fall on the shipowner.

Pilotage from ashore

The recent years’ technology on pilotage from ashore has developed at a high pace. If vessels can be brought into port or depart using land-side vessel guidance in bad weather conditions then why this method can not be applied in good weather conditions is unclear. It seems contradictory that vessels only need pilotage on board

when the going is smooth. This is especially so when considering that innovations such as electronic charts, much improved GPS systems and reliable VHF connections are available today and increasingly becoming the bridge equipment norm.

This scenario of shore side vessel assistance could be a way forward when considering the expected shortage of serving captains and senior officers over the next few years. This should be subject to further research and assessment.

VI. COMPETITION FROM NON EU PORTS, IMAGE OF PORTS

Problems referred to at the Tallinn Workshop in respect of ports located in the border regions of the EU should be further analysed.

To maintain and further enhance their competitive position European ports should constantly improve their efficiency, adapt to changing circumstances and look for innovation in port services. In this regard the use of EU funds to finance non-EU ports should be used with discretion and avoid distorting the competitive and efficient edge of EU ports in the same region. The suggestions made in the previous chapters may be helpful in this respect.

The image of ports suffers from the same problems as maritime transport itself. The indispensable nature of shipping and other maritime services including port services for their daily lives is not sufficiently known with the general public.

Moreover many port activities have been shifted from city centres to an area outside, which worsens the awareness of the modern activities of this sector.

As suggested in the Green Paper on a Future Maritime Policy there is a bare necessity to do something to improve the image of shipping and port services. A first step could be to establish appropriate data on the direct added value followed by promotion campaigns.

VII. CONCLUSION

ECSA appreciates the Commission's initiative in launching a consultation on an overall European Ports Policy. This is an essential element of a European transport policy especially taking into account that 90 % of European trade is transported by sea.

A continuous improvement towards more efficient services is a key element for the maritime services Europe relies on.

Often the discussion on whether ports and port services are efficient enough is too much dealt with in isolation looking solely at port services or at a maritime port-to-port leg. This is a wrong and unrealistic starting point. Reality is a supply chain approach where maritime services are an element in an overall service package. In such a supply chain approach each and every element or link in the chain plays a key role. The most efficient and cost effective transport mode will be chosen. Evidently handover points play a fundamental role in the end result.

Improving supply chains is one of the key elements of the Lisbon Policy to make the European economy the best in the world. It would be difficult to explain and to understand why one specific sector in a maritime supply chain should be an exception to this policy.

In this context we cannot abstain from reiterating a few concrete and practical remarks such as:

- All port services should be involved in an ongoing approach towards improvements.
- Investments in port capacity and hinterland connections are clearly a priority.
- Safety is a key prerequisite - but the safety argument should not be abused to maintain or to introduce protectionist measures. A contestable safety risk assessment is essential.
- Technical progress should be encouraged instead of being opposed.
- Qualification of all involved in port services is essential but should not be abused with protectionist measures.
- A fair balance between environmental concerns, port development and the wider economy has to be established.

A question that has often been brought forward during the exchange of views on a future port policy is whether specific legislation is necessary.

ECSCA shares the view expressed by the vast majority of stakeholders that rather than introducing a new Directive soft law should have the preference as a first step. ECSCA leaves it to the Commission to consider the most appropriate form of such soft law such as through an Interpretative Communication, Guidelines or another way of guidance.

The fact remains that the Treaty and in particular the four freedoms apply to port services notably:

- Free provision of services
- Right of establishment
- Free movement of persons
- Freedom for movements of goods

...and of course the Competition Rules. The European Commission is the guardian of the Treaty and should ensure that it is properly applied. A Soft Law Framework could be helpful in this respect.