



January 11, 2013

European Commission
Directorate-General for Mobility & Transport
Unit D1 – Maritime Transport and Logistics
B-1049 Brussels, Belgium

RE: Public Consultation on the European Union e-Freight Initiative – Joint Response by WSC and ECSA

Introductory Comments

The World Shipping Council (“WSC” or the “Council”) and the European Community Shipowners Association appreciates the opportunity to offer comments on the issues raised in the “Public Consultation on the European Union e-Freight Initiative”, which was circulated on October 26, 2012. The Council is a trade association of 29 liner shipping companies that together account for more than 90% of the world’s containerized shipping capacity. The WSC members also operate vehicle carriers, roll-on/roll-off vessels, heavy-lift vessels, and refrigerated cargo vessels on a liner basis. The liner shipping industry transports more than 65 percent of the EU’s seaborne trade by value (exclusive of intra-EU shipping).¹

The WSC and ECSA begin these comments by noting that they are aware of no facts that would support an allegation that commercial information exchange practices “lead to an under-exploitation of multi-modal transport”. The industry is constantly updating and improving its information technology systems and constantly looking for ways to facilitate the efficient flow

¹ The World Shipping Council is registered with the Registry of Interest Representatives, ref. 32416571968-71. Additional information about the Council and the liner shipping industry is available at www.worldshipping.org. The European Community Shipowners’ Associations ECSA represents the interests of the national shipowners’ associations of EU Member States and Norway. ECSA is the registered with the Registry of Interest Representatives, ref. 59004966537-01.

of trade. Ocean carriers have invested hundreds of millions of Euros into world-wide systems that they use to manage every aspect of their transportation networks. Those systems are constantly being refined to better serve customers and to make the business more efficient, and to comply with various government information filing requirements.

The Commission could play a constructive role in improving the efficiency of required information filing with the 27 EU Member States, and thus the WSC and ECSA may be able to support the concept of a “Single Window”, although as discussed herein, we believe that the e-Freight Initiative consultation document’s description of the current Single Window efforts for maritime commerce does not reflect the current implementation work on Directive 2010/65 (EU) and, as highlighted in the Council and ECSA’s recent communication to DG MOVE, that re-directed and re-focused efforts are needed with respect to this initiative.

The other elements of the e-Freight Initiative, however, are subjects that the Council and ECSA believe are better left to the private sector to address. The stated objective of the e-Freight Initiative is to develop “an overall framework for information exchange between the different actors in the transport logistics chain ... in combination with the necessary standards, administrative, governance and legal provisions.”² While efficient information exchange with EU government authorities is a legitimate issue for the Commission to examine, information exchanges between private sector commercial parties should be left to the private sector. Specifically, WSC and ECSA do not believe that DG MOVE should proceed further in consideration of how it would develop, promote, or impose:

- a. A Single Transport Document
- b. “Freight journey planners and booking tools”, or
- c. The private sector’s development and use of cargo “tracking and tracing” technology and its products.

The “Single Window”

The concept of a “Single Window” has merit for the EU and the industry to pursue together, but such an effort would benefit from greater clarity about the scope of what is being considered. DG TAXUD and the 27 EU Member States’ Customs authorities already require the filing of substantial cargo information from arriving carriers and shippers. While a “single EU window” for this supply chain data would be most appreciated by the industry, we recognize that this is unlikely to be within the scope of an initiative by DG MOVE.

Accordingly, if a “single window” in the context of an e-Freight initiative is defined to mean a single window for the arriving carrier to submit all required conveyance and related

² Document “*Public Consultation on European Union e-Freight Initiative*”, page 4.

information, in a common format for all arriving EU conveyances, through either a single EU portal or 27 Member States using a single, common set of information system functional and technical specifications, including common data formats and data structures, then the industry would be most interested in participating and supporting such an objective. If the “single window” will not produce a uniform European approach to the data to be acquired and the IT system specifications governing the submittal and exchange of the data-- which, unfortunately, seems to be the current direction of the implementation work -- then we do not believe that the initiative would have value. We already have separate data filing requirements at an EU national level. There is no need for the Union to create an expensive new data filing requirement if the data filings would vary by Member State.

A Single Transport Document

The e-Freight consultation document alleges that “seamless information flows is a prerequisite” for transport logistics. Putting aside the issues of what “seamless information flows” actually means and what it involves, this assertion appears to form the basis for an argument that the EU should consider “developing an electronic Single Transport Document (electronic multimodal waybill) allowing for the provision of the same information to “the whole multimodal chain and for business-to-business operations ... [and that] shall also become the source of information for the fulfillment of reporting obligations.” This is a subject area fraught with substantial and complex questions of law and practice, as well as issues relating to regulatory compliance³ and international cargo liability regimes. The consultation document does not even begin to cover them. We do not believe there is a commercial or regulatory need for the e-Freight Initiative to become mired in this subject matter. Moreover, as explained at various previous occasions, shipping as an international industry needs international rules and not a regional (European) regime.

“Booking tools” and “freight journey planners”

WSC and ECSA respectfully suggest that commercial cargo booking systems and cargo “journey planners” should be matters within the sole purview of the private sectors to design and implement, with the recognition that regulatory compliance information may need to be obtained, stored and distributed by the responsible parties’ IT systems. So long as the regulated commercial parties are able to submit required data to the competent regulatory authorities, there is no compelling case for DG MOVE to consider regulating such matters or systems.

³ For example, transport documents may vary according to: the various cargo liability regimes of the importing or exporting country and of the mode of transport; the Customs, security or trade regulations of the importing or the exporting country; and, the commercial terms of agreement between the carrier and the shipper.

“Tracking and tracing” technology

The WSC, its Member companies and ECSA are active participants in ISO standard setting efforts in this area as well as other related initiatives. Recently, the WSC has proposed a new ISO initiative regarding the development of container monitoring and tracking standards in response to emerging market interest in such technologies. We note, however, that: 1) the market demand for such technology products is very uneven and evolving; 2) different technologies create different operational issues and challenges, 3) the data products from such devices vary and are valued differently by different customers, and 4) the usage and capabilities of these technologies, including the information to be collected, stored and transmitted by them, should be defined by the operator of the device based on its business model and requirements, not be superimposed by governments. This subject area is not a candidate for regulatory intervention by the EU or any other government except for issues such as spectrum and bandwidth allocation and health and environmental issues stemming from the usage of various types of technologies.

Legal Requirements

The questionnaire states at section 4.1.M2 that: “This measure could establish binding legal requirements on the implementation of services (e.g. as regards single windows, information sharing, single transport document) or on the use of standards in development and implementation of services.” The scope of the statement is breathtaking, as is the scope of the potential chaos it could cause if implemented.

Because few specifics are offered, it is not productive to engage in a detailed analysis of the many implications of the statement regarding possible legal requirements, including possible extra-territoriality considering the international nature of the EU’s intermodal supply chains, and including restrictions on the freedom of contract and confidentiality between commercial parties.

Summary

The private sector has invested hundreds of millions of Euros in its legacy IT systems. When those systems need to be continuously upgraded and improved, the industry makes the necessary capital investments to improve its operational efficiency and to facilitate compliance with applicable regulatory requirements. The e-Freight Initiative questionnaire raises very substantial questions about huge, new capital investments that are not needed for regulatory compliance, and are not viewed as needed by the commercial parties who own and operate the affected IT systems and transport the cargo. There is also no discussion of the fact that, after all of the money necessary to build such an envisioned system is spent and the business disruption is endured, there is no reason to think that what would be produced would be any

better than what the market would produce if left to adapt to customer demand and market innovation and development.

The Commission would do well to recall the lessons learned from the advance cargo information filing system developed under Regulation 1875 by the Member States' Customs authorities and DG TAXUD. That project took six years to complete, and ocean carriers were required to make their IT systems compatible with the systems of each of the various Customs services in the 27 EU Member States in which they do business. The direct costs on carriers of re-programming and software and hardware purchases are conservatively estimated to have been in the tens of millions of Euros. That does not include the time and the hundreds of millions of Euros spent by the Commission and the Member States. And yet, the data being acquired by that system and the system itself are subject to continuing reassessment about their adequacy; the Modernized Customs Code was scheduled to become effective in 2013 requiring new regulations and IT systems modifications, adaptation and development and deployment as set forth in more than 4000 pages of draft provisions and "business process models"; and, the EU is considering the adoption in the coming months of a Uniform Customs Code to replace the Modernized Customs Code before it comes into effect, triggering the need to review, revise and amend the already produced implementation material for the Modernized Customs Code. A plea for careful analysis, clear identification of common important priorities, and regulatory stability is warranted.

The system envisioned by the e-Freight Initiative consultation documents would cover far more economic actors, have a much wider scope, and encompass much more information than the cargo screening system discussed immediately above. While we recognize the e-Freight Initiative has not developed beyond a very high level concept, we recommend that its assumptions and premises be carefully reexamined. As with analogous proposals that were considered several years ago in the U.S. at the urging of various large, corporate data system integrators -- who thought that they could serve as "data integrators" and facilitators of "seamless" information flows -- and that were rejected for good reason by both industry and the U.S. government, a careful, detailed and public consideration of what information is needed by governmental authorities, from whom, and by when, should be the initial building block of any regulatory initiative. Such a review would also identify that many of the apparent assumptions in the consultation document are not well founded.

For example, allegations that there is a "limited level of information on multimodal transport services and of multimodal booking tools" are simply not true in international liner shipping. In addition to the Internet-based booking tools maintained by the individual shipping lines, there are also competing "portals" that allow shippers to electronically choose services and routings, make bookings, track shipments, and access numerous other logistics services.

(See, e.g., www.INTTRA.com; www.GTNexus.com; www.CargoSmart.com) The United Nations Economic Commission for Europe has recognized these portals and has noted that the work of the UNECE in supporting the evolution and maintenance of the UNCEFACT Recommendations and the UN/EDIFACT message protocols has facilitated the use of electronic tools by the portals. See <http://tfig.unece.org/contents/shipping-portals.htm>. In addition, third party logistics providers and ocean carriers alike continue to introduce increasingly sophisticated supply chain management tools in response to customer demand.

Second, the conclusion from the hypothetical case study in the background document is that the primary benefit expected from the e-Freight Initiative is the replacement of human involvement in the transportation system by automation. Although the industry is constantly looking for ways to improve the efficiency and productivity through automation, international intermodal transportation is a service that operates in a complex environment. Road, rail, and port congestion, weather, labor disruptions, inland waterway water levels, equipment breakdowns, financial and banking transactions, customer demands regarding changed routing and discharge of goods (“cargo diversion”) and government regulators -- all may affect a shipment during transit and may require the intervention of well-trained and experienced people. The suggestion that automation by itself can improve the response to these complex situations is untested and somewhat naïve.

The Commission should not try to develop a comprehensive regulatory structure to manage commercial data or IT systems. There is always room for improvement, and commercial solutions are in fact constantly improving. These are matters for the private sector to address.

The above does not mean that the well-intentioned objectives of the Commission March 2011 White Paper for the creation of a Single Transport Area cannot and should not be pursued. WSC and ECSA would specifically encourage the immediate implementation of the proposed Single Market II package for the creation of a true internal market for maritime shipments akin to the arrangements that already apply to other modes of transport. Similarly, we would encourage that the planned implementation of the maritime reporting Directive be re-set so as to better and more effectively meet the stated goals of the Directive of simplification, facilitation and harmonization. And we would encourage that the Union’s Customs procedures be simplified and streamlined in the proposed Union Customs Code to reduce the administrative and compliance costs of European economic operators while facilitating legitimate trade.

Sincerely,

A handwritten signature in blue ink that reads "Damian Viccars". The signature is written in a cursive style and is underlined with a single horizontal line.

Damian Viccars
WSC Brussels Representative

A handwritten signature in black ink that reads "Alfons Guinier". The signature is written in a cursive style and is not underlined.

Alfons Guinier
ECSA Secretary General