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EUROPEAN PORTS POLICY

ECSA POSITION PAPER

I. INTRODUCTION

The European Community Shipowners' Associations (ECSA) has been closely involved in the discussions on a European ports policy since the 90's. Throughout the years ECSA has reiterated the importance of efficient transport nodes for the European economy, which is strongly relying on shipping services.

With 90% of European trade transported by sea, ports have a key role to play in the necessary revival and growth of the economy. Today, faced with the financial and economic crisis, well performing ports, port services and hinterland connections are more relevant than ever. An efficient transport system is a fundamental element of the growth potential of the EU, as transport has positive spill-over effects on the entire economy.

Efficient ports are also crucial for the sustainability of the EU transport system and continued efforts must be done to ensure that the conditions for a modal shift from land to sea are in place in order to reduce environmental impact of transport and decongest the road network.

Therefore, as the main users of ports and port services, ECSA welcomes the revived Ports Policy Initiative of the European Commission.

ECSA appreciates the European Commission's efforts to seek views and input from the relevant stakeholders. Shipowners have contributed to the questionnaires and studies on pilotage, port labour and port performance. However, ECSA questions the representativeness of the results of the study on port performance. Both the timing, over summer holidays, as well as the format of the questionnaire, being very rigid in format and in content, seriously discouraged companies' participation. In view of the importance of the conclusions drawn from such a questionnaire for future EU port policy initiatives, ECSA would have liked a more user friendly and more relevant format. Regrettably, this is still not the case with the latest questionnaire on port service enhancement.

ECSA has furthermore actively contributed to the discussions at the EU Ports Policy Conference the European Commission organised in September 2012.

ECSA believes that the priority targets for an EU Ports Policy Initiative should include:

- Facilitation of development of port infrastructure and hinterland connections;
- Transparent, relevant and negotiable pricing by autonomous port authorities;

- Reduction of red tape;
- Port concession systems that select the best operator without unnecessary bureaucracy;
- Efficient and competitive port services respecting free market principles.

ECSA summarises hereunder its key points for a European Ports Policy.

II. PORT AND HINTERLAND INFRASTRUCTURE

Investment in port infrastructure and hinterland connections should be a priority since transportation bottlenecks in ports lead to costly delays, missed berthing slots in subsequent ports, higher fuel costs to make up schedules, readjusted schedules, missed ports, missed feeder and train connections, expansive rerouting of cargoes, modified documents and penalties.

Access roads and intermodal connections are insufficient to ensure the swift and efficient transportation of containers and other units 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 aim 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 import-dependent industries and manufacturers and a serious lack of predictability and reliability in supply chains.

To solve the abovementioned problems, significant investments in ports and in particular in hinterland connection infrastructure are required. These investments must be based on a long-term vision of the market's needs. The focus must be on ports where investments have the potential to improve the positioning of goods by shortening distances and/or improving the quality of intermodal connections.

Therefore, ECSA welcomes the fact that more than 80 ports are part of the core European Transport Network (TEN-T) and stresses the need to make appropriate funding available under the financial envelope of the 'Connecting Europe Facility'. Only when a complete and integrated EU transport network is in place will European shipowners and other transport industries be able to fulfil their role as driving forces for economic growth in the EU.

III. PORT DUES AND TARIFFS / AUTONOMOUS PORT AUTHORITY

Setting of tariffs and port dues should be treated as a commercial issue and left to individual ports. Port dues and 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 demonstrated cost of providing it.

An overall EU structure of port tariffs would be unworkable and create 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 by promoting best practice.

Whether a port authority is a public entity, a landlord or a privatised business is not important. An overall EU model for port authorities would have little or no added value. Whatever the form of the port authority, it should be acting in an autonomous way, avoiding bureaucracy but ensuring transparency on financial relations, in particular when the port authority is involved both in public functions as in commercial activities. Whether and to which extend the port authorities are involved in economic activities must be left to the Member States. However, the internal market and more precisely the four freedoms must be respected.

IV. ADMINISTRATIVE SIMPLIFICATION

The “red tape” with which shipping is faced is enormous, for shore and sea personnel alike. Recent analysis of the variety of documents to be submitted by the Master when calling a port confirms that many of the required documents are not used at all. This needs a complete review and unnecessary submissions must be abolished.

Burdensome requirements of customs procedures, immigration, sanitary, phyto-sanitary and other controls are very detrimental to the attractiveness of maritime transport. The streamlining and rationalisation of these administrative procedures faced by shipping will not only contribute to the reduction of “red tape”, but moreover will have a beneficial impact on trade and favour the shift of cargo from the road to the sea. Therefore, ECSA actively supports the Blue Belt and the e-maritime initiatives.

ECSA underlines the need for a standardisation of port and pre-arrival documents to be sent electronically, preferably in a single format to one point of entry. Shipowners therefore need either standardised or at least interoperable/interconnected national single windows of the various Member States, before a European single window is implemented at last.

Simplification of customs procedures for all types of shipping based on the legal gap analysis is another necessary step to reduce red tape, as is coordinated inspections by public authorities on board ships.

V. CONCESSIONS

Shipowners rely on well-functioning, well equipped and cost-efficient service providers. Port concessions systems should ensure selection of the best operator without unnecessary bureaucratic procedures.

Tenders/concessions will in many cases, and especially in cases of market limitations, be the best way to select the most efficient service provider with a highly competitive price structure. Where there is no limitation on the number of service

providers, there is no need to limit in time authorisations and/or concessions or to introduce unnecessary bureaucracy. In other cases concession periods should be set in such a way that they attract investments, encourage competition and allow for a reasonable return on investment.

In most ports tenders/concession systems already exist today. As long as these are fair, transparent and relevant, an imposed harmonised detailed (bureaucratic) system on tendering does not seem necessary.

VI. PORT SERVICES: TECHNICAL-NAUTICAL SERVICES AND CARGO-HANDLING SERVICES / PORT LABOUR

The 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. ECSA regrets that the principles for port services laid down in the Communication on EU Ports Policy (2007) have not been implemented. Therefore, action has to be taken in order to respect the internal market principles of the EU Treaty (four freedoms).

VI.1. Technical-nautical services

VI.1.1. Towage

Towage is a normal commercial service and should not be considered as a service of general economic interest. In most cases market principles are applied. However, in practice, there are still situations where specific measures or local rules need to be adapted to ensure free access. Where a limitation of the number of operators is justified, there should be open access for competitors through tenders on a fair and equal basis and reasonable concession periods should be applied.

Safety arguments should not be abused to impose mandatory services or undue conditions. 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. Towage should not be arbitrarily imposed.

The necessity to take tugs at all or the number of tugs required should remain at the discretion of the Master on the basis of the vessel's design, equipment and technology (including propulsion, steering and bow/stern thruster propulsion systems).

As for other commercial services, towage rates should be relevant, reasonable, transparent and negotiable.

VI.1.2. Pilotage

ECSA welcomes the European Commission's study on Pilotage Exemption Certificates, which provides a lot of information on pilotage. Subject to some factual corrections to be made, ECSA is of the view that the overview is comprehensive and provides a correct image of pilotage and PECs in the EU.

The study demonstrates extensively the wide variety of rules, understanding and requirements regarding pilotage and PECs within the EU, Norway and Croatia. Shipowners – especially those involved in short sea shipping - are confronted with this on a daily basis and would very much welcome more transparency and streamlining of rules and procedures.

Even the concept as such of pilotage varies within the EU. Therefore, ECSA would like to clarify that the basic premise of pilotage is that a pilot “advises” the Master of a vessel on the basis of his/her specific knowledge of the relevant area. However, the Master retains total command of the vessel at all times and may question or reject the pilot’s advice at any time.

ECSA believes in general that it is necessary to review the pilotage service provision systems.

Safety

It is accepted that safety requirements play an essential and fundamental role in the work provided by pilotage services. However, as can be concluded from the European Commission study on PECs, even an experienced pilot on board a vessel is not a guarantee for zero accidents. Therefore the safety argument should be taken very serious but does not justify unduly monopolistic behaviour.

Shipowners believe that safety is best served by efficient pilotage services. In this respect it is important that an objective safety risk assessment at local level is conducted, involving port authorities, pilots and port users, when determining the use and the tasks of pilotage services. Practices of imposing services without an accepted risk assessment process should be stopped.

Pilotage providers

If, based on a comprehensive safety and market assessment, involving all relevant stakeholders, it is decided that a specific port or area can accommodate more than one pilotage service provider, it should be ensured that:

- Pilotage infrastructure will be made accessible to all providers;
- Tenders will take into account that safety and service standards set by the stakeholders (port authorities, pilots and port users) will be composed in such a way that cherry picking to the detriment of overall services is avoided.

Pilotage Exemption Certificates (PECs)

All Member States have their own procedures and criteria for granting PECs. However, not all Member States are in reality granting PECs or, in some cases, only very few. ECSA welcomes the European Commission’s study on PECs which demonstrates this variety and diversity. It would be interesting if the European Commission would – among others - identify best practice.

Since there exists a variety of definitions of PECs, ECSA would like to clarify the core meaning of a PEC, namely that the PEC holder has sufficient local knowledge and experience to demonstrate that he/she can substitute the local pilot whilst ensuring that the vessel can safely proceed into and out of the area.

As to safety, ECSA would like to underline that – as documented by the PECs study from the Commission – the same (high) level of navigational safety standard can be provided by a PEC holder as by a pilot on board of the vessel.

PECs are gained through proven experience and (mostly) relevant examinations. The possibility to obtain Pilotage Exemption Certificates (PECs), on the basis of objective and transparent criteria, should be promoted where the process so far is not satisfying. The process for obtaining a PEC should be relevant and appropriate and all related stakeholders should be involved in the definition of the process.

English, the IMO bridge language, including for communication from ship to shore and vice versa, should be accepted as a valid language for PEC exams. Knowledge of key shipping terms in the local languages may be an acceptable additional requirement. Cumbersome procedures refusing personal certificates for the same type of vessels and service should be abolished.

Qualification

It should be questioned whether the requirement for a captain's license should be a pre-requisite for becoming a pilot (the PEC study learns that some non EU countries do not impose this requirement). The central role of the pilot is to offer his/her specific knowledge of local waterway conditions sometimes coupled with his/her ability in handling/manoeuvring vessels in the port area. As long as candidates are well trained with regard to these specific tasks, the captain's license is secondary. As mentioned above, the Master remains in command and is liable for the safety of the ship.

Public Service Status

Whatever the status of the organisation of pilotage may be; pilotage, when mandatory, may contain some elements of a public service but generally should not be considered de facto a public service.

Pilotage from ashore

Technological developments on pilotage from ashore have to be taken into account and should be subject to further research and assessment. If, as is the case in some Member States, vessels can enter into or depart from a port using only land-side vessel guidance during bad weather conditions (without taking a pilot on board as usual during normal weather conditions), the question should be put whether this cannot become the general pilotage procedure in this area; especially when taking into consideration that innovations such as electronic charts, much improved GPS systems and reliable VHF connections are available today.

This scenario of shore side vessel assistance could also be a way forward when considering the expected shortage of pilots over the next few years.

VI.1.3. Mooring

Mooring, like the other technical-nautical services, should be governed by market principles. In principle, limitations to the number of mooring operators should not

exist. However, where there is a limitation, there should be free access via fair and equal tenders and reasonable concession periods, which should be both frequent and transparent. As for other commercial services, mooring rates should be relevant, reasonable and negotiable.

Mooring services should not be mandatory imposed, the Master of the vessel should decide on a case-by-case basis on the use of mooring services, considering vessels' on-board technology.

VI.2. Cargo-handling services / Port labour

It is evident that cargo handling should be subject to normal market conditions and competition. Service availability is an important issue for the shipping industry and should be ensured 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.

Labour issues have, rightly or wrongly, been the most sensitive issue in the previous discussions on a European Ports Policy. ECSA nevertheless remains convinced that an open dialogue on port labour must take place to increase efficiency and competitiveness resulting in more trade and employment. ECSA explicitly refers in this context to the recent study made by the OECD on the very positive impact of ports on regional employment.

Good qualification of all involved in port services is without doubt a must and the qualification criteria must be relevant. The definition of these criteria can be left to the relevant national authorities; however, a dialogue between providers and users should ensure that the criteria are appropriate and transparent.

The four freedoms of the EU Treaty are also applicable to cargo-handling 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. First findings of a study on port labour in EU ports, done at the request of the European Commission and presented at the EU Ports Conference of September 2012, give an indication on the many existing restrictive rules and practices in EU ports. European shipowners hope these findings will set a good basis for adjusting the restrictive practices which sometimes result in cargo routing at higher costs and longer transit time than what they should be, when preference is given by a shipping line to a port with competitive conditions over an "expensive" one.

Social Dialogue

ECSA understands that a social dialogue will be established for port services. This is a normal evolution as EU shipowners 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.

VII. CONCLUSION

Ports are essential elements of a European transport policy, especially taking into account that 90 % of European trade is transported by sea.

ECSA trusts that the revived EU Ports Policy Initiative will ensure that European ports can optimally fulfil their nodal role in the EU transport system. As a consequence, European shipowners, the main users of ports and port services, will be able to contribute more to the economy and growth in the EU.

In 2007, all stakeholders supported the soft law approach. Five years later, it is clear that this did not entirely deliver what was expected. The four freedoms of the EU Treaty are still on the table for application and ECSA calls upon the European Commission to play its role as guardian of the EU Treaties. There are different ways to ensure that the EU Treaty rules are applied. Whether this will be achieved through secondary legislation or an individual legal approach is an open question.

ECSA recalls that for shipowners the EU priorities should be:

- Facilitation of development of port infrastructure and hinterland connections: Connecting Europe Facility;
- Transparent, relevant and negotiable pricing by autonomous port authorities;
- Reduction of red tape;
- Port concession systems that select the best operator without unnecessary bureaucracy;
- Efficient and competitive port services respecting free market principles: priority action is necessary on towage, pilotage and port labour.

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