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Accompanying document to the

COMMUNICATION FROM THE COMMISSION

on a European Ports Policy

Summary Impact Assessment

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Lead DG: TREN

Other involved services: SG, SJ, ENV, ENTR, MARKT, COMP, SANCO, TAXUD, FISH, TRADE

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SECTION 1: PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

1.1 Background and consultations

The Communication on a European Ports Policy is part of the CLWP 2007, SEC (2006) 629 final, and a priority initiative in the work programme of DG TREN, 2007/TREN/004.

Following the withdrawal of the proposal for a Directive on Market Access to Port Services COM (2004) 654, Vice-President Barrot launched a stakeholder consultation. DG TREN organised six workshops with stakeholders on port issues. Participants were selected by the relevant European associations.

For each workshop DG TREN elaborated a discussion document. Written contributions were received from a number of associations. In parallel, Member States' port experts met with DG TREN.

1.2. Preliminary findings from the consultation

- Organisational structure of ports: vast mosaic of port management models
- Port financing: wide variety of approaches to port financing in Member States
- Capacity shortages due to growth of cargo volumes, difficulty to upgrade terminals, sub-optimal location of port capacity. Level-playing field for access to port land and port services necessary
- External impacts: balance between economic growth and environmental protection necessary
- Social issues: better training, health and safety enforcement, more flexible employment patterns and social dialogue required
- Public image of ports: ports not fully appreciated by society

SECTION 2: PROBLEM DEFINITION

European ports face many and varied challenges. Maritime traffic growth demands port facilities. Container shipping is the fastest growing maritime sector. Vessel size increases. Expansion of ports has not kept pace with capacity needs.

In spite of decentralisation and increased financial autonomy, diverse approaches to port financing in Member States exist: differing levels of financial autonomy and provision of public financing; lack of transparency in tariff setting.

Labour issues include: enforcement of health and safety rules, provision of high level of training, more flexible employment patterns and social dialogue.

Ports compete within supply chains. Competition has two aspects: Intra-port competition, related to port services, and inter-port competition between ports in the same market segment.

Environmental legislation ensures the sustainability of ports. Progress has been made in environmental management, but environmental constraints on port projects have led to complex procedures.

The value of ports is often not fully appreciated. There is awareness of "hard" benefits; less of their "soft" benefits.

EU's right to act

Art. 211 of the EC Treaty empowers the Commission, as the Guardian of the Treaty, to ensure that its provisions and the measures taken by the institutions pursuant thereto are applied, and to formulate recommendations or deliver opinions on matters dealt with in the Treaty if the Commission considers it necessary.

Concerning ports policy, the Commission bases its right to act on the following Titles of the EC Treaty:

Title III (arts. 39 et seqq.), EC Treaty, (free movement of persons, services and capital).

Title V (arts. 70 et seqq.) EC Treaty (common transport policy).

Title VI (arts. 81 et seqq.), EC Treaty (*inter alia*, common rules on competition).

In accordance with the principle of subsidiarity, art. 5 EC Treaty, the following policy areas have been left to Member States, social partners and stakeholders:

- Spatial planning;
- Social dialogue;
- Image of ports.

SECTION 3: OBJECTIVES

- (1) To ensure sufficient port capacity available to handle traffic growth
- (2) To promote greater freedom of access for new port service providers
- (3) To promote fair competition within and between ports
- (4) To promote more flexible employment patterns and social dialogue
- (5) To raise environmental management standards in ports and to achieve a better balance between environmental protection and economic growth

SECTION 4: POLICY OPTIONS, ASSESSMENT OF OPTIONS, COMPARISON OF OPTIONS, CHOICE OF OPTION, CONCLUSION

Some options are alternative, others are additive or sequential. On some options there is consensus, others are controversial. Some options have been developed in the two previous proposals for a directive, some others need more study. Some options contribute to long-term policy goals; others will generate short-term improvements in the port system.

1. CONCESSIONS FOR TERMINALS IN PORTS

A port authority can opt for the direct operation of a terminal or entrust the operation to a third party. In many Member States the latter is done by a concession on port land for a given time. The choice of the concessionaire is done by a tender or on a discretionary basis.

In a legislative option the costs of competitive selection of terminal operators are tendering, contract administration and regulation costs, increased litigation, sub-optimal use of port capacity, shorter amortisation periods for investment. Tendering entails costs.

Benefits include: faster cargo handling, shorter ship turn-round times, reduced dwell times for cargo, lower operating costs, transparent procurement procedures, lower cargo handling charges, more investment, and positive economic impacts.

Experiences with past proposals suggest opposition to legislation. Many of its benefits can be achieved through soft law.

The Commission services should clarify how existing legislation, ECJ jurisprudence and Commission Communications apply to port concessions.

2. WORK IN PORTS

The practice for stevedoring is diversified across the EU. The issue at stake is port pools, entities providing staff to terminal operators.

In a legislative option the main costs of abolishing or modifying compulsory labour pools are compensation payments, loss of earnings for redundant workers, the costs of transferring labour to individual employers, use of less skilled labour, and reduced power of the unions. Opposition to a proposal could lead to strike. Labour costs may increase for more permanent labour.

Main benefits: are higher labour productivity, regularity of employment, greater flexibility in the use of labour, closer correlation between hours paid and hours worked, less idle time.

Experiences with the past proposals suggest opposition to legislation. Many of its benefits could be achieved through a soft law option, such as analysing the compatibility of the use of pool staff with the Treaty.

Social dialogue emerged from the consultation. It can help improving productivity, make ports more attractive for customers, contribute to the development of maritime transport, and to more and better jobs.

There are no specific Community rules on training for port workers. Training is of primary importance for the safe and efficient operation of ports. A legislative option might be considered in this respect.

There are general Community rules for the protection of health and safety of workers. Full respect of these rules is crucial and should be monitored.

The Commission services intend to encourage the establishment of a European social dialogue committee in ports, propose a mutually recognizable framework on training of port workers, and closely monitor the implementation in ports of Community health and safety rules.

3. TECHNICAL-NAUTICAL SERVICES

Technical-nautical services are towage, pilotage and mooring.

3.1 Pilotage

The impact of any EU measure on pilotage operations is too small to justify assessment; very few commercial companies offer pilotage services, pilotage is likely to remain strictly regulated, and most ports will use safety for not changing existing arrangements.

Experiences with past proposals suggest opposition to legislation. A soft law option interpreting the application of Treaty rules to the sector might be considered.

3.2 Towage

Apart from tendering costs, a legislative option Directive may affect market structure by reducing the number of firms. Entry of additional operators would lead to loss of economies of scale. Large tug operators could take advantage of the legislative option and expand their activities at the expense of smaller operators leading to social cost.

Benefits could be lower prices, innovation and service quality improvements.

A legislative solution may lower prices, but may burden existing and new entrants with additional costs. An interpretative soft law option could obtain similar benefits.

3.3 Mooring

In the legislative option costs for tenders are likely to be low. The entrance of additional operators will impact on labour intensity with increased idle time, and a fall in quality and safety of service. Competition would come from self-handlers.

The main benefit of increased competition is lower prices.

The legislative option does not seem to be desirable; an interpretative soft law option could obtain similar benefits.

3.4. Conclusion

The Commission services should clarify how existing legislation, ECJ jurisprudence and Commission Communications apply to technical-nautical services.

4. ENVIRONMENTAL ISSUES

Ports may be located in areas protected by environmental legislation; this requests a better planning of the port construction process. If this is not taken into account delays or cancellation of projects may occur.

The cost of fulfilment of environmental standards depends on the level of compliance and on the port size. A large port may need a budget of up to a million euros per year. Certification leads to better environmental protection and medium/long term savings higher than the certification cost.

Some stakeholders have claimed legal uncertainty of environmental legislation and diverse transposition into national legislations. Guidance on their interpretation may allow improved environmental management.

Such a soft law solution is the best choice to achieve progress in terms of environmental standards and to offer guidance to port authorities on the interpretation of legislation.

The Commission services recommend issuing guidelines on the application of Community environmental legislation to port development.

5. SPATIAL PLANNING

Transport flows across the EU can appear irrational. Freight is often transported to the end-user by road from ports located far away, while there are ports in the vicinity.

Costs related to currently favoured maritime routes from the Far East to Northern European ports and, as an alternative example, to Mediterranean ports closer to the final destination of the goods, should be calculated. Alternative scenarios with lower transport, external and time-related costs than the current situation could be devised. This would call for extended impact assessments when developing major ports. Inefficiencies in hinterland connections would need considerable infrastructure investments.

The Commission services recommend at this stage the "do nothing" option and leave this matter to national and regional authorities.

The 2010 TEN-T mid-term review will evaluate port hinterland connections and their impact on traffic flows.

6. FINANCIAL AUTONOMY, TRANSPARENCY AND TARIFFS

6.1. Financial autonomy and tariffs

The Commission services recommend the "do nothing" option and leave the matter to the competent national authorities, but insists on the need for more clarity on the composition of port tariffs, and on more transparency on their relation with costs.

6.2. Transparency

In a legislative option the number of ports impacted if Directive 2006/111 is extended to ports with a turnover \geq € 20 m but $<$ € 40 m would become 42, and ports with a turnover $<$ € 20 m would become 260. The Directive already applies to ports with a turnover \geq € 40 m, there will be no impact on these.

Transparency in public financial flows and in the pricing system in the Community port sector is essential for a level playing field within and between ports. It is considered a key element for the application of State Aid provisions. Transparency in the accounting system means transparency of port charges.

The Commission services recommend following the legislative option to create a level-playing-field among ports.

As for public financing, setting a level-playing field between ports is necessary. The Commission will follow also the soft law option and adopt guidelines on State aid to ports.

7. IMAGE OF PORTS

Ports often have an insufficiently good public image.

Promoting the image of European ports is a subject to be mainly left to ports themselves, regions and Member States. The Commission services will examine cooperation, especially regarding environment and security aspects.

SECTION 5: SUMMARY OF OBJECTIVES AND IMPACTS, OPTIONS RETAINED AND EU ADDED VALUE

5.1. Summary table

| Objectives and impacts | Option 1 | Option 2 | Option 3 |
|--|------------|--------------------|----------|
| Description of option | Do nothing | Legislative option | Soft Law |
| <i>Impact on new market access policy objectives</i> | | | |
| Concessions | - | + | ++ |
| Work in Ports | - | 0 | ++ |
| Technical-nautical services | - | + | + |
| Economic impacts | | | |
| Environmental issues | -- | + | ++ |
| Spatial planning | 0 | n/a | + |
| Financial transparency, autonomy and tariffs | -- | ++ | ++ |
| Impact on other relevant Community policies | | | |
| Environment | - | + | ++ |
| Social | - | + | ++ |

++ = Significant positive impact

+ = Somewhat positive impact

0 = Neither positive nor negative/no change from present situation/unclear at this time

- = Somewhat negative impact

-- = Significant negative impact

n/a = Not applicable

5.2. Options recommended

1. Interpretation of existing legislation, jurisprudence and Communications regarding their application to port concessions and technical-nautical services.
2. Encourage social dialogue on ports. Propose mutually recognizable framework on training to port workers. Monitor health and safety rules in ports.
3. Extend Directive 2006/111 to all ports.
4. Guidelines on the interpretation of environmental legislation
5. Evaluate port hinterland connections and their impact on traffic flows.
6. Explore promotion of the image of ports.

5.3. EU added value

The Communication proposes an integrated approach to the challenges confronting EU ports.

SECTION 6: MONITORING AND EVALUATION

The Communication identifies actions at EU level for a coherent set of measures for different policy areas. One single solution cannot deal with all port-related issues. The solution is a combination of measures.

SECTION 7: MONITORING AND EVALUATION

The Communication on a European Ports Policy will outline the actions the Commission will take between 2008 and 2009 regarding the different port-related policy fields.