

EUROPEAN COMMISSION'S REVIEW OF EUROPEAN PORTS POLICY



Europe is highly dependant on its ports to facilitate trade, both internationally and within the Internal Market. It is expected that ports will play a significant role in supporting economic recovery across Europe in the coming years. However, European Commission (the Commission) statistics have revealed a number of concerns over the ability of ports to meet increasing market demands. In 2011, EU ports handled around 3.7 billion tonnes of cargo and the Commission has predicted that by 2030 this figure will have doubled, making expansion and development an imperative.

The Commission has recently published its new regulatory initiative, following on from its 2007 Communication on European Ports Policy.¹ The initiative supplements existing Policy and comprises a legislative proposal (the Regulation) and a parallel Communication. The Regulation will seek to establish a framework on market access to port services and establish greater financial autonomy and transparency across

319 trans-European network (TEN-T) ports. The Communication introduces 'soft measures' through eight EU actions. These relate to measures such as the strengthening of the TEN-T network to identify priority investments under the "Connecting Europe Facility", the support of administrative simplification in ports, the clarification of EU State aid rules and the promotion of the European Social Dialogue.

Both the Regulation and Communication highlight a number of key challenges that the Commission hopes to address. Broadly speaking, these challenges fall into two categories; current sub-optimal port operations and port governance issues.

The Commission hopes to address the current structural performance gap that exists within Europe's port network. The efficiency between EU ports varies considerably, resulting in congestion, longer sea and land trips, greater emissions, and added costs for shippers, operators and consumers. This is particularly problematic in

1 COM(2007)616.

the context of increasing demands from the shipping sector, both in terms of technological and logistical requirements. The initiative is intended to help port operators upgrade their services and facilities, and to give them greater financial autonomy in creating a sustainable and competitive port network in the long-term.

In terms of port governance, the major concern is that of unfair competition through restrictive practices, market entry barriers, and the lack of transparency in the use of public funds. In particular, the Regulation includes new rules to prevent possible price abuses by operators with exclusive rights. By ensuring an open, competitive environment, the Commission ultimately hopes to promote better, more reliable services and a more transparent financial framework, in turn attracting greater private investment.

Regulation Proposals

To address these concerns, the Regulation introduces new rules on the way EU ports will be operated in terms of services, governance and overall supervision, representing a shift towards greater transparency and consumer-focus. The key elements of the proposed Regulation are set out below.

Funding and State aid

A major concern of stakeholders has been the financial transparency and autonomy of European ports. While many ports in continental Europe are owned by public bodies and/or private undertakings, some states, such as the UK, operate largely privately funded ports. This disparity in ownership models has led to concerns over the distortion of competition, through public funding practices of port infrastructures. While the Commission Communication expressly



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“recognises and respects” this diversity of ownership, it highlights the need for transparency where public funding operates unfairly.

In addressing these concerns, the Regulation introduces measures to promote a ‘level playing field’. It requires that managing bodies in receipt of public funding ensure that systems are in place for transparent accounting, to evidence the effective and appropriate use of state funds. The Regulation also introduces controls on the allocation of public service obligations (PSO). New rules allow Member States to designate competent authorities to impose PSOs, but require that obligations must be clearly defined, transparent, non-discriminatory and verifiable, relating only to the availability, accessibility or the affordability of the port service.

In parallel to these measures, the Communication creates a specific action to modernise State aid rules across all economic sectors. By the end of 2013, the Commission will clarify the rules relating, in particular, to the financing of infrastructures.

Transparent open procedures to select providers of port services

The Regulation proposes freedom to provide port services and imposes a number of controls on the way port managing bodies designate providers of these services. Managing bodies will now only be permitted to impose certain minimum requirements on the providers of port services, such as professional qualifications, equipment, safety and security specifications, and environmental requirements. These requirements must be objective and proportionate, and must not implicitly impose market barriers.

Managing bodies must further justify any limitation on the number of service providers, either through formally documented space constraints or, in the case of an imposed PSO, on the basis of a clear, publicly available intention, published in advance.

Freedom to levy charges

In addition to the controls placed on managing bodies, they will now be granted the freedom to levy infrastructure charges. In conferring this power, Brussels recognises that ports themselves are best placed to identify user needs and determine

charges. They must, however, be determined in a wholly autonomous way and may only be varied in accordance with genuine commercial practices. Port service charges may also be levied, provided that such charges are transparent, non-discriminatory and proportionate.

Supervision and accountability

The determination and adaptation of these levies will be subject to the supervision of a competent independent supervisory body. Each Member State must appoint a supervisory body to monitor the application of the Regulation. This body can form part of an existing committee and must cooperate closely with its other European counterparts for the purpose of shared mutual assistance, information exchange and decision-making principles.

In addition to the independent supervisory body, the Regulation requires that a port users' advisory committee be established in each port. This committee will comprise representatives of cargo owners, vessel owners and other port users that are subject to port infrastructure or service charges. Under the proposed rules, this committee will have to be consulted on the level and structure of charges imposed. Managing bodies will also be required to consult stakeholders on broader issues, such as the coordination of port services, hinterland connections and administrative procedures. These consultation mechanisms reflect the Commission's move towards a customer-focused approach. Details of implementation will, however, be left to local port communities to allow for greater flexibility and to reduce any administrative burden.

Criticism

Critics of the Commission's regulatory initiatives have expressed concerns that the requirement to appoint independent supervisors for ports would create "unnecessary procedures and delays" and increase bureaucracy. Concerns have also been raised by the European Sea Ports Organisation, regarding competencies extended under the Regulation and over some of the proposed procedures, which they fear will have a negative impact on a port's commercial freedom and its ability to invest.

This view has been challenged by the Commission, which insists that the new rules will in fact cut "red tape" through more transparent and open procedures to designate the providers of port services. The Commission estimates that under these new rules, ports could benefit from savings of up to €10 billion by 2030 and a reduction in port costs of up to 7%.

One of the central criticisms of the initiative has been its failure to liberalise cargo handling. The above provisions will not be imposed on cargo handling services or passengers terminals, which will continue to be dealt with through concession contracts. Negotiations during consultation stages relating to labour regimes were met with strong opposition. The Commission subsequently revealed that these will be addressed through a complementary future Directive, dealing with the award of concession contracts, as part of a broader effort to initiate a Social Dialogue at Union level. Through the establishment of a Social Dialogue Committee, the initiative also hopes to improve working conditions and address the predicted 70,000 direct new jobs that will be created by 2030.

The proposal must be approved by the European Parliament and Member States, before being adopted under the normal legislative procedure. If this approval is obtained and the Regulation adopted, it will come into force on 1 July 2015. Further measures to collect and develop generic indicators of European port performances will commence before the end of 2013.

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