



EUROPEAN SEA PORTS ORGANISATION ASBL/VZW  
ORGANISATION DES PORTS MARITIMES EUROPEENS ASBL/VZW

## OPEN LETTER TO THE MEMBERS OF THE COMMITTEE ON TRANSPORT AND TOURISM OF THE EUROPEAN PARLIAMENT

Brussels, 11 January 2010

Dear Madam, Dear Sir,

In the coming days the European Parliament will hear the candidate-Commissioners that were designated by Commission President José Manuel Barosso.

The European Sea Ports Organisation would like to use this occasion to raise its concern about the assessment of State aid in the port sector and, notably, the production of State aid guidelines.

It is a public secret that interpretations on the application of State aid rules to ports differ within the Commission. This has been the reason for the ongoing delay in the production of the aforementioned State aid guidelines, which were originally announced for 2008. Several attempts to produce such guidelines were in fact undertaken since the early 1990s already, but these have for a variety of reasons failed to be completed.

ESPO regrets this evolution, the more so since the current economic climate reinforces the call for public financial support in the port sector. An unambiguous legal framework is therefore needed that provides certainty to both public and private investors.

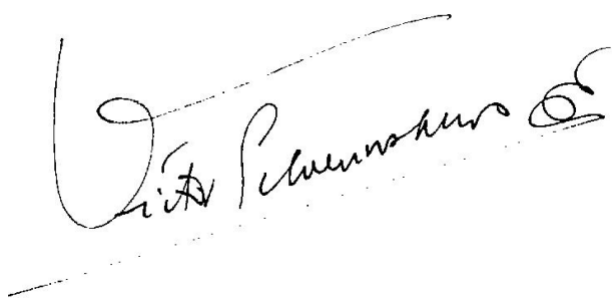
Concretely, ESPO advocates a pragmatic approach which continues to reserve the right for Member States to finance the construction of port infrastructure as a general measure of economic policy which would not normally be considered to fall under the Treaty rules on State aid. This general principle would however not apply to any kind of possible aid resulting from preferential treatment of certain companies for the use of these infrastructures. The essential elements of this approach are summarised in the annexe to this letter.

Adopting a more dogmatic interpretation whereby any form of public funding would a priori be seen as State aid would not only jeopardise the future development of seaports and their integration in logistics chains but may also lead to a tremendous bureaucracy in terms of notification procedures which would further delay already cumbersome port planning processes with no real added value. In addition, this approach would then logically also have to be applied across the transport chain in order to ensure a level playing field.

We trust that this is not the way the new Commission would want to go. We would therefore be grateful if you could raise this matter during the relevant hearings this week.

Meanwhile we remain at your disposal for any further clarifications you may require.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Victor Schoenmakers', with a long horizontal flourish extending to the left.

Victor Schoenmakers  
Chairman

A handwritten signature in black ink, appearing to read 'Patrick Verhoeven', with a long horizontal flourish extending to the right.

Patrick Verhoeven  
Secretary General



## ANNEXE

### Basic principles of EC State aid guidelines for ports:

- State aid guidelines should only cover the port area as such, i.e. the area for which the port authority is fully responsible, and be concerned with economic activities only.
- Within the port area, a distinction should further be made between access and defence infrastructure, project-related infrastructure and superstructure.
- Public funding for the provision and operation (including maintenance) of access and defence infrastructure does not constitute State aid and should not be notified to the Commission unless such works would benefit a single user or operator.
- Public funding for the provision and operation (including maintenance) of project-related infrastructure and superstructure would in principle constitute State aid and should be notified to the Commission.
- Public funding for the provision of project-related infrastructure however does not constitute State aid, and should therefore not be notified, if the market economy investor principle is met according to specific conditions.
- Public funding for the operation (including maintenance) of project-related infrastructure and the provision and operation of superstructure can, when notified to the Commission, be declared compatible with art. 86(2) of the Treaty.
- State aid guidelines should apply to future funding schemes only and apply in principle to all ports. There should be no distinction between different categories of ports, with the exception of truly peripheral ports that are not engaged in international competition with other ports.
- State aid guidelines cannot function without the principle that port authorities should have financial autonomy.