



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

COMMUNICATION FROM THE EUROPEAN COMMISSION ON A EUROPEAN PORTS POLICY

General response of ESPO

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Executive summary

ESPO welcomes the communication from the European Commission on a European Ports Policy as it generally reflects the balanced picture that emerged from the stakeholder consultation. ESPO further welcomes the broad perspective of the communication and its general focus on soft law measures and instruments.

The European port scene is becoming more diverse in terms of the number of ports involved and the scope of port functions and services, leading to more routing options for shippers. ESPO believes that the Commission should refrain, now and in the future, from any interventionist policies which, directly or indirectly, aim at reorienting traffic flows in Europe. The Commission can however help to ensure that every European port is able to use its full potential. Bottlenecks related to – inter alia – lack of reliable hinterland connections to ports can furthermore be addressed through the Commission’s general transport (and especially rail freight) policy as well as existing regional development, cohesion fund and TEN-T programmes.

Provided that a wider range of port development needs is taken into consideration, ESPO would very much welcome guidelines on the application of Community environment legislation to port development. ESPO hopes that the aim to produce these in 2008 can be maintained and readily offers the experience and expertise of its members as input. The Commission should also consider measures to further reinforce the legal status of port development projects. Equally, existing and pending environmental legislation should be simplified and regulatory bottlenecks should be solved, especially with regard to management of water bodies and sediments.

ESPO principally supports the creation of a European Maritime Space without Barriers as a means to simplify administrative procedures for intra-EU maritime transport. Paper bureaucracy should however not be replaced by e-bureaucracy and IT-based solutions should be cost-effective, also for smaller and medium-sized ports.

ESPO will prepare a constructive contribution to the development of a set of generic European performance indicators to measure both terminal performance and customer satisfaction with the overall port product. Given the highly competitive nature of the port industry, such an exercise should however respect commercial sensitivities. ESPO fully shares the Commission’s analysis of the diversity of port management systems existing in Europe and welcomes the recognition of the need for port authorities to have a sufficient degree of autonomy, including full financial autonomy.

ESPO welcomes the Commission’s intention to produce guidelines on State aid to ports in 2008 and is ready to engage in further discussions on the basis of the principles it has developed earlier. ESPO further supports the extension of Directive 2006/111/EC to all merchant ports covered by the State aid guidelines.

ESPO agrees that fairness and transparency obligations apply when Member States’ authorities decide to entrust a third party with a portion of port land for the provision of cargo-handling services through a concession. Concessions are very useful governance instruments for public landlord port authorities. ESPO therefore appreciates the Commission’s recognition of the discretionary powers port authorities

should have in using them and broadly agrees with the interpretation given in the communication. ESPO will study how port authorities are currently using concessions as governance tools and may produce further comments and initiatives at a later stage.

ESPO agrees with the Commission's interpretation of Treaty rules with regard to technical-nautical services and labour pools.

ESPO believes that principles of transparency should apply to port charges but finds it is equally important that, where appropriate, the port authority can set or control these charges and adapt them to meet the requirements of its customers and/or the overall interest of the port. ESPO fails to understand why the Commission singles out port dues and doubts whether there is any added value in disseminating best practices. There should in any case be no regulation of port charges at EU level and differential charging for environmental or other purposes should be left to subsidiarity.

ESPO will provide concrete input to an inventory of problems which distort competition between EU ports and ports from neighbouring non-EU countries.

ESPO is prepared to take on an active role in the promotion of enhanced co-operation between cities and ports. It endorses in particular the Commission's proposal to have an annual European ports open day and offers to be a partner in the organisation of such an event. ESPO further supports the Commission's intention to assess the impact of security measures on accessibility of ports but remains skeptical about the added value of having a European model for multi-purpose access cards.

ESPO agrees that dialogue between stakeholders can contribute significantly to a better understanding between parties concerned and a successful management of change. A general stakeholder dialogue is worthwhile to pursue, both at local and European level. Being mediators and coordinators of the various commercial and public interests present in port communities, port authorities are well-placed to initiate such dialogue processes. ESPO also intends to fully partake in discussions on the agenda of a European sectoral social dialogue committee.

The Commission should compare the different existing systems of professional qualifications for port workers before producing a mutually recognisable framework and should closely monitor Community rules on safety and health of port workers.

1. General comments

ESPO welcomes the new communication from the European Commission on a European Ports Policy as it generally reflects the balanced picture that emerged from the stakeholder consultation which was held from June 2006 until June 2007.

ESPO also welcomes the broad perspective of the communication which includes topics such as capacity expansion and port-city relations which were never thoroughly discussed at European level, despite their vital importance for many European ports.

ESPO agrees with the general focus of the communication on soft law measures and instruments. These match better with the diversity of European ports than hard legislation. In this respect, ESPO especially appreciates the Commission's recognition of the pivotal role of port authorities, notably with regard to the use of concessions.

ESPO further welcomes the fact that the Commission is not seeking to develop measures which would alter distribution of traffic across Europe. ESPO believes this non-interventionist policy should always prevail, now and in the future. The market, in combination with policies of regional and national authorities, is largely capable of finding its own solutions.

ESPO finally looks forward to continuing the constructive dialogue with the services of the Commission and colleagues from other stakeholder organisations on the instruments and measures which are announced in the communication. ESPO is particularly interested in contributing to guidelines on the application of Community environmental legislation to port development and State aid guidelines. ESPO encourages the Commission to produce both before the end of 2008 and generally recommends that a clear timeframe is maintained for all actions announced in the communication.

This paper contains the general response of ESPO to the principal policy issues which are raised in the communication. Some of the comments below may be elaborated further or lead to particular initiatives of ESPO at a later stage.

2. Economic context and challenges

ESPO would like to put the Commission's impression that port traffic in Europe is concentrated in a handful of north-western European ports in a broader perspective.

It should first of all be specified that the percentages mentioned in the communication, which are taken from the 2007 ESPO/ITMMA market report on the European seaport industry¹, refer to container traffic.

¹ ESPO and ITMMA (2007), ESPO Annual Report 2006-2007 including a market report on the European seaport industry
<http://www.espo.be/downloads/archive/02beddc2-b876-4644-8f22-b03d5b1349aa.pdf>

More importantly, the communication does not reflect the full analysis of the ESPO/ITMMA report which clearly demonstrates that the trend is towards participation of an increased number of European ports on the competitive scene rather than a channeling of traffic through only a few ports. The report for instance identifies that the strongest growing container ports in 2006 were mostly small and medium-sized ports located in various port ranges in Europe.

The European port scene is thus in fact becoming more diverse in terms of the number of ports involved and the scope of port functions and services, leading to more routing options for shippers.

ESPO therefore recommends that the Commission takes these developments into account before drawing any conclusions as regards possible imbalances in the European port system.

3. Port performance and hinterland connections

ESPO agrees with the Commission that most well known European ports can be considered efficient in economic terms but that several bottlenecks still exist. In ESPO's view these mainly relate to lack of capacity in ports and lack of reliable hinterland connections.

ESPO strongly believes that the exploration of alternative transport routes as a means to achieve a more intensive use of all existing ports and a more rational distribution of traffic across Europe should always be left to the market which, in combination with policies of regional and national authorities, is largely capable of finding its own solutions. This is clearly demonstrated in the section above.

The Commission should therefore indeed refrain, now and in the future, from any interventionist policies which, directly or indirectly, aim at reorienting traffic flows in Europe.

The Commission can however help to ensure that every European port is able to use its full potential. Some of the measures and tools announced or included in the Commission's communication may already serve this purpose, e.g. environmental guidelines, State aid guidelines, guidance on concessions and measures aimed at further efficiency of port services and simplification of administrative procedures.

In addition the Commission can stimulate the resolving of bottlenecks through its general transport (and especially rail freight) policy as well as existing regional development, cohesion fund and TEN-T programmes. The 2010 mid-term review of the latter should be used to generate more resources for hinterland connections to ports. These funds should be allocated on the basis of objective cost-benefit criteria and there should be no discrimination among ports on the basis of perceived traffic imbalances.

4. Expanding capacity while respecting the environment

ESPO would first like to clarify that the need for capacity increase is not limited to the four cases listed in the communication. Furthermore, the suggested trade-off between city and port development is an option which in many European ports is not available due to the scarcity of available land and/or fixed port boundaries.

Provided that a wider range of port development needs is taken into consideration, ESPO would very much welcome the Commission's intention to produce guidelines on the application of Community environment legislation to port development.

Such guidelines should ensure recognition of pre-existing EU and international legal regimes for waterway and port-related activities, introduce good governance principles on prior consultation with port authorities before designation of sites under environmental Directives and clarify all outstanding interpretation problems with the present legal framework.

ESPO hopes that the Commission is not giving up its original ambition to produce these guidelines in 2008 and readily offers the experience and expertise of its members in order to make progress quickly. The recent ESPO Code of Practice on the Birds and Habitats Directives is presented as a first concrete contribution².

ESPO further invites the Commission to consider, in addition to guidelines, measures which would reinforce the legal status of port development projects and simplify existing legislation. Also, ESPO will gratefully use the opportunity offered by the Commission's new Maritime Policy to submit on short notice a list of regulatory bottlenecks related to EU environmental legislation.

As regards management of water bodies and sediments, ESPO first of all calls upon the Commission to ensure that ongoing legislative proposals in these fields³ recognise that non-hazardous sediment is not to be regarded as waste and that dredging operations do not introduce any new pollutants into a water body. Existing sediment contamination in the waters covered by the Water Framework Directive should be tackled through the instruments of that Directive (mainly the river basins plans). Ports should moreover not be held (financially) liable for historical contamination in port areas and navigation channels which finds its origins in upstream sources.

As regards port reception facilities and ship emissions, ESPO recommends a pragmatic course of action, refraining from any measures which would interfere with the tariff structure of ports. Economic incentives such as differential charging should be left to subsidiarity. On ship emissions, solutions should furthermore be found at IMO level. Unilateral EU measures would put the European port and shipping sector in a disadvantageous international position.

² ESPO (2007), Code of Practice on the Birds and Habitats Directives
<http://www.espo.be/downloads/archive/d4fd1c39-99dc-478a-a307-4bee791fc8ae.pdf>

³ Reference is made in particular to the proposal for a Directive of the European Parliament and of the Council on waste (2005/0281(COD)) and the proposal for a Directive of the European Parliament and of the Council on environmental quality standards in the field of water policy and amending Directive 2000/60/EC (COM(2006)398final).

ESPO finally encourages the Commission to support sector-driven initiatives and projects which aim at self-regulation, promoting best practices and achieving high European standards in the field of environmental port management.

5. Modernisation

ESPO principally supports the initiative of the Commission to create a European Maritime Space without Barriers as a means to simplify administrative procedures for intra-EU maritime transport. ESPO will submit a more detailed response to the specific consultation on this proposal.

As regards an e-maritime approach, ESPO believes that Europe should give higher political priority and resources to the implementation of reform programmes which strive for a paperless customs environment. ESPO however generally feels that paper bureaucracy should not be replaced by e-bureaucracy and that IT-based solutions should be cost-effective, also for smaller and medium-sized ports.

ESPO notes that co-operation between (neighbouring) ports, as advocated by the Commission, should be left to the initiative of the port authorities concerned, taking into account local circumstances. Co-operation projects should furthermore respect EU competition rules.

Finally, ESPO will extend its ongoing work on benchmarking to prepare a constructive contribution to the development of a set of generic European performance indicators as also advocated by the Commission's new freight transport agenda. Port authorities notably have an interest in monitoring both terminal performance and customer satisfaction with the overall port product. Given the highly competitive nature of the port industry, it is however important that such an exercise respects commercial sensitivities.

6. A level playing field – clarity for investors, operators and users

6.1. The role of port authorities

ESPO fully shares the Commission's analysis of the diversity of port management systems existing in Europe and welcomes in particular the recognition of the need for port authorities to have a sufficient degree of autonomy and, in particular, for them to enjoy full financial autonomy. The Commission could encourage the latter through its intended modification of the Transparency Directive (see section 6.2).

6.2. Public financing - transparency

ESPO welcomes the Commission's intention to produce guidelines on State aid to ports in 2008 and reiterates that these should be based on the following principles:

- 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.

ESPO is ready to engage in further discussions with the services of the Commission on this basis.

ESPO also supports the extension of Directive 2006/111/EC to all merchant ports covered by the State aid guidelines. In addition, a specific amendment should be included to encourage Member States to ensure that, as regards management, administration and internal control over accounting matters, port authorities have independent status and full financial autonomy.

6.3. Port concessions

ESPO shares the Commission's view that fairness and transparency obligations apply when Member States' authorities decide to entrust a third party with a portion of port land for the provision of cargo-handling services through a concession. ESPO understands that the Commission defines concessions in the broader sense, i.e. including public domain concessions, land lease agreements, licences, permits etc.

ESPO believes concessions are very useful governance instruments for public port authorities working under the landlord model. ESPO therefore appreciates the Commission's recognition of the discretionary powers port authorities should have in using them.

ESPO in particular recommends the following principles, which are in line with the interpretation provided in the communication:

- Port authorities should set selection criteria which reflect the commercial strategy and development policy of their ports.
- Transparency obligations should only apply in case there is a sufficient connection with the functioning of the internal market. ESPO believes this rule should extend to situations where the concession concerns single-user facilities linked to installations such as steel plants, oil refineries or grain silos.
- Durations of concessions must be proportional to depreciation of investments, allowing a reasonable return on investment but maintaining a risk inherent in exploitation.
- Port authorities should include clauses to ensure that terms of concessions are respected and to protect the legitimate interests of ports and local communities, notably with regard to overall quality and performance of port services. ESPO believes such clauses should also deal with cases whereby a service provider is taken over by another company, influencing the competitive situation in a port.
- Port authorities could also opt to include concession clauses which aim at reducing negative external effects of port operations, optimal use of land and modal shift objectives.
- Rights of workers in case of transfer of activity should be protected.

ESPO recognises that, when a concession expires, renewal is considered equivalent to granting a new concession. ESPO would however recommend that a port authority can include, if appropriate, prolongation options in the original concession terms, provided these are transparent and proportional.

ESPO will study how European port authorities are currently using concession instruments as governance tools and may produce further comments and initiatives at a later stage.

6.4. Technical-nautical services

ESPO agrees with the Commission's interpretation of Treaty rules with regard to technical-nautical services.

ESPO underlines that, within the area under their jurisdiction, port authorities should have control over technical-nautical services and be responsible for giving a license to operate as well as controlling tariffs where applicable. Technical-nautical services provided outside the jurisdiction area of the port authority should be controlled by another relevant competent authority, but with a participation of the port authority / port authorities which is / are most directly concerned by the quality and performance of the services.

6.5. Cargo-handling

ESPO agrees with the Commission's interpretation of Treaty rules as regards labour pools.

The interpretation coincides with the principle that service providers in ports should have full freedom in engaging qualified personnel of their own choice and employ

them under conditions required by the service, provided all applicable social and safety legislation is respected.

6.6. Port dues

ESPO agrees that principles of transparency should apply to all port call costs relating to public tasks or services of general economic interest, such as charges for the use of general port infrastructure (port dues) and charges for technical-nautical services. It is however equally important that the port authority, where appropriate, can set or control these port charges and adapt them to meet the requirements of its customers and/or the overall interest of the port.

ESPO fails to understand however why the Commission singles out port dues as it is not aware of any major and legally upheld complaints. Neither is there in Europe case-law which would suggest that there is a problem in this regard. Finally, it must be taken into account that port dues represent the proportionally smallest component of total port call costs and have only limited impact on port choice.

ESPO therefore doubts whether there is any added value in disseminating best practices on transparency in port dues.

ESPO in any case warns for any attempt to regulate port charges at EU level and repeats its view that differential charging for environmental or other purposes should be left to subsidiarity. A better level playing field between ports should be achieved through a common interpretation of the State aid rules and the general application of the Transparency Directive to all merchant ports, as already proposed by the Commission.

6.7. Competition with third countries

ESPO welcomes the Commission's proposal to set up an inventory of problems which distort competition between EU ports and ports from neighbouring non-EU countries. These problems are especially relevant for ports in the Mediterranean, Black Sea and Baltic ranges and may relate to public financing, fiscal, environmental, safety, security and social issues as well as politically-inspired actions such as the Turkish embargo on Cypriot ships and Baltic-Russian border crossing problems

ESPO will provide concrete input to this exercise and encourages that relevant problems are addressed in Community external relations policy. They may also play a role, where applicable, in accession negotiations.

7. Establishing a structured dialogue between ports and cities

ESPO is pleased to see that the Commission seeks to promote and enhance co-operation between cities and their ports. Integration of ports into cities and city life combined with a strong awareness, interest and even pride of citizens in port activities are vital for the sustainable development of ports.

ESPO agrees that this is in first instance a responsibility of the port sector itself and is prepared to take on an active role in this field. The Commission can nevertheless act as a catalyst in supporting good practice and common learning, encouraging ports to engage in partnerships with – for instance – tourism, recreation, culture and heritage sectors.

ESPO particularly welcomes the Commission's proposal to have an annual European ports open day and offers to be a partner in the organisation of such an event. ESPO is ready to encourage active participation of all its members and can bring together good practices of ports which already organise such annual events successfully.

ESPO finally supports the Commission's intention to assess the impact of security measures on accessibility of ports and to provide guidance on how both can be reconciled. ESPO nevertheless remains skeptical about the added value of having a European model for multi-purpose access cards.

8. Work in ports

ESPO agrees that dialogue between stakeholders can contribute significantly to a better understanding between parties concerned and a successful management of change.

A distinction must be made between a general stakeholder dialogue and a social dialogue in the narrow sense. Building on the positive experience of the consultation exercise which preceded the ports policy communication, the former seems in any case worthwhile to pursue, both at local and European level. Being mediators and coordinators of the various commercial and public interests present in port communities, port authorities are well-placed to initiate such dialogue processes.

Given that port employment is a key factor to the overall performance and attractiveness of a port, ESPO also intends to fully partake in discussions on the agenda of a European sectoral social dialogue committee.

ESPO can support the Commission's intention to set up a mutually recognisable framework on training of port workers but proposes to first compare the different existing systems of professional qualifications for port workers.

Finally, ESPO supports the close monitoring of Community rules on safety and health of workers in ports.

Since 1993, ESPO represents the port authorities, port associations and port administrations of the seaports of the European Union. The mission of the organisation is to influence public policy in the EU to achieve a safe, efficient and environmentally sustainable European port sector operating as a key element of a transport industry where free and undistorted market conditions prevail as far as practical.

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