



State aid C 13/2009 – France – Measures in favour of the port sector

Response of ESPO to the invitation of the European Commission to submit comments pursuant to Article 88(2) of the EC Treaty – 25 June 2009

1. The European Sea Ports Organisation represents the common interests of the port authorities, port administrations and port associations in the 22 maritime Member States of the European Union and Norway. It has observer members in Croatia, Iceland and Israel.
2. With this response ESPO wants to contribute to the European Commission's enquiry into the possible existence of State aid in the measures notified by the French government that are part of the port reform programme introduced by Law No. 2008-660 of 4 July 2008.
3. ESPO first of all wants to underline the significance of the French port reform programme. By transferring the responsibility of terminal operations from the public to the private sector, the larger ports of France ("Grands Ports Maritimes") subscribe to the so-called "landlord" port governance model which applies to most other major ports in Europe and indeed elsewhere in the world. In this way the French major ports will substantially increase their competitiveness and be able to use their full potential. This will ultimately benefit the performance of the European port system as a whole.
4. Port reform processes are complex and notably involve delicate social and financial aspects. Experience in other Member States demonstrates that it is not unusual for governments to accompany reform and privatisation schemes with transitional supporting measures similar to those introduced by the French government. This is often the only way to make the reform accepted by social partners and stakeholders concerned.
5. So far such supporting measures have hardly been scrutinised by the European Commission on the existence of State aid. ESPO therefore does not want to express a detailed opinion as to whether these measures could effectively constitute State aid.
6. ESPO just takes note of the fact that:
 - a. The valuation of cargo handling equipment is verified by a neutral and independent commission to ensure that the selling price is fair and that, in case of failure to negotiate mutual agreements, port authorities will have to launch tenders. In previous State aid decisions and publications, the Commission suggested that these methods qualify to establish a market price.
 - b. The tax exemption measure entails a total amount of 97,5 million Euro over a period of six years, covering all ports concerned, which amounts to an average of 0,7 million Euro per port / per year.
7. More fundamentally, ESPO is concerned about the Commission's approach regarding State aid in ports. The present critical enquiry follows recent decisions of the Commission where a



much more generous approach has been followed in terms of the nature of State aid and its compatibility with the provisions of article 87(2) and (3) of the EC Treaty.

8. This approach hardly provides legal certainty for governments, port authorities and other stakeholders concerned. For many years ESPO has been asking the Commission to produce State aid guidelines for ports to remedy this problem. Although the Commission confirmed in its 2007 Ports Policy Communication that such guidelines were forthcoming by the end of 2008, ESPO is disappointed to note that up to the present day there is still no clear sign of progress.
9. ESPO has expressed its views on the content of State aid guidelines clearly in its contributions to the Ports Policy Communication and confirms again its commitment to deliver constructive input to make these guidelines a clear and useful instrument. ESPO therefore encourages the Commission to speed up the process and produce a draft set of guidelines for consultation as soon as possible.

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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