

8<sup>th</sup> November 2012

## POSITION PAPER

---

### European Ports Policy Review

CLECAT, the European Association for forwarding, transport, logistics and customs services, represents national federations of European multinational, medium and small freight forwarders, logistics operators and customs agents. Freight forwarders and customs agents are booking and clearing more than 60% of all cargo transported by sea and as such, represent a large part of port users. Therefore, CLECAT has a first and foremost interest in the Commission's initiative of reviewing EU Port policy.

Over the last few years the European Commission has chosen for a port policy facilitating industry rather than regulating industry. CLECAT has supported this approach and believes that there is an important role for the Commission in stimulating financial investment (public and private) in the necessary infrastructure, which will better enable the efficient flow of goods through the ports to or from the hinterland, improve efficiency, lower costs and increase productivity. At the same time we were disappointed that previous attempts by the European Commission to instill greater competition within and between ports and providers of port services failed. We continue to believe that there is a role for the EU by creating conditions of enhanced competition within ports and between ports.

CLECAT welcomed public statements from Commissioner Kallas in May this year when he addressed in his speech 'Steering a course for the future: Europe's ports in the 21<sup>st</sup> century' the challenges for growth in the years ahead, i.e. bottlenecks due to inefficiencies and non-competitive regimes within ports. We share the belief that it is time to re-assess EU port policy, not the least in view of the need for recovery of the EU economy and the competitiveness of Europe in a global context.

This paper will outline CLECAT's expectations on the future EU port policy. At the same time we have encouraged our members to respond to the consultation on port services.

#### ***Ports policy as part of a logistics policy***

CLECAT has repeatedly raised concerns over the lack of infrastructure, especially connecting roads, rail and inland waterways in port areas. On the land side, reliable and sustainable hinterland connections are key for a port to achieve its optimum capacity rating and future development. Significant focus must be placed on the infrastructure connecting the port with the hinterland in order to ensure existing port capacity can be fully utilized and reach its full operational potential.

It is on the landside that congestion causes environmental damage, delays and costs. Therefore, there is a need to find sufficient means to improve rail access, connecting motorways, upgrading rivers and inland waterways that feed into ports. In this context, CLECAT supports the implementation of the new TEN-T guidelines as an integrated transport network, linking national infrastructure to core infrastructure along trans-European freight corridors including ports.



EU ports policy should reflect the fact that a port is but one step in a supply chain, though it is a critical step: delays caused by inefficient port processes and procedures can have serious implications on the rest of the logistics operation to the final point of destination. The handling of ships, trucks, barges and trains is not an end in itself - it is the handling and onward distribution of the freight that must be the goal. Therefore, logistics service providers and freight forwarders are looking for port services to integrate into the supply chain and, where possible, add value. Whereas in the current economic climate port congestion is limited, it is expected that growth will return and trade will resume and recover eventually to the levels seen previously and beyond. Therefore it is important to prepare for the future.

### ***A level playing field and competition across Europe***

The Commission has a role to play in creating a level playing field in which ports can develop and compete. CLECAT believes that the services which are offered within port areas should enjoy a proper level of competition. Free and fair competition contributes to improving transparency, non-discrimination, quality and efficiency. Full and fair intra and inter-port competition would provide the best level of transparency for port tariffs. Given that competition fosters greater efficiency and productivity, the Commission should ensure that competition is not restricted or artificially distorted. In that regard, state aid, whilst supporting development, can impact on competition to the detriment of those private enterprises not in receipt of such aid.

### ***Competition between service providers in ports***

CLECAT is not persuaded by the arguments voiced previously by the port industry that enabling more than one provider of port services to exist within an existing port is unfair and often impractical. Equally, due to the often strategic nature of port location in relation to markets and major shipping lanes, we do not believe it is fair that an incumbent operator/owner should be entitled indefinitely to maintain that position. There are also mounting concerns over the seemingly growing market dominance of certain port groups in the ownership and operation of container trades. This dominance can represent a threat to competition.

The difficulties facing new entrants in rail freight in port areas have been well-documented, and although progress is being made, it is occurring far more slowly than the industry would like. There are continuing conflicts of interest, in particular for access to rail related services (e.g., access to terminals, maintenance and servicing of trains etc.) between different market players.

On this we would like to make an important observation: transparent conditions and open access to shunting yards and related operations are not yet ensured. This is an area where it is crucial that the Commission's efforts make it possible, without discouraging investments, for new entrants to compete with the incumbents on a level playing field.

### ***Financing***

Freight forwarders require ports and services and associated infrastructure to be provided where determined by demand. Competition for funding is fierce and therefore priority funding should be given to those developments and enhancements where demand is greatest. EU ports policy should seek to facilitate the provision of reliable and authoritative supply and demand data that ensures the

appropriate use of available capital investment. In this respect, we have also noted that the TEN-T projects should be subject to a rigorous cost/benefit analysis.

### ***Concessions***

CLECAT believes that the criteria for the granting of authorisation should be transparent, non-discriminatory, objective, relevant and proportional to ensure that only the most efficient service providers with highly competitive price structures are successful. In most European ports these authorisations already exist and tender procedures ensure non-discriminatory access to the operation of port facilities. However, there are cases where concession contracts are not awarded following a transparent, objective and fair procedure. Furthermore, the duration of authorisations remains a concern; most importantly, durations should be long enough to encourage investments, i.e. to allow a proper return of investments, but without becoming a hidden means of preventing competition.

In this respect, CLECAT welcomes the draft Directive on the awarding of concession contracts as part of a package on modernising public procurement which was published last year. The proposal includes provisions designed to increase the transparency and fairness of award procedures for concessions. The provisions for the ports are based on the existing case law and by no means introduce stricter regulation.

### ***Restrictive practices***

The situation with regard to restrictive labour practices has largely improved in Europe over recent years. However it remains the case that there are some ports where practices remain highly restrictive, (as also noted by Commissioner Kallas), and amount to what is in effect a 'closed shop' where service providers may not select the personnel of their own choice. Restrictive labour practices within ports can cause significant delays and costs. Where these exist, the European Commission should exert its influence to ensure the parties concerned engage together in order to find appropriate ways to remove restrictive and anti-competitive practices, whilst guaranteeing social protection. CLECAT is looking forward to the final results of the study on labour from Professor Van Hooydonk and expects the Commission to take a number of initiatives on the basis of the results.

### ***Technical-nautical services***

CLECAT is of the opinion that competition breeds efficiency, and provided the authorities closely monitor the service providers for any breaches of safety codes and conduct, then competition between providers of technical-nautical services (e.g., pilotage, tugging, etc.) would be just as beneficial to the overall efficiency of the port operation as the introduction of competition would be to any other service within the port. So far a soft law approach has been followed by the Commission. In this respect, existing legislation in EU competition rules should be properly applied.

### ***Transparency and charges***

In liner shipping, there is generally one principal charge, the Terminal Handling Charge (THC), along with any specific cargo-related charges. The charges, however, may vary dramatically from port to

port and, in the case of THCs, depending on the port to port route of the freight. Given that most ports operate in largely the same way, it is not clear as to why there is such a dramatic variability in the charges between ports. In the absence of adequate transparency of port costs, one is left with the view that the charges do not always reflect the actual costs to the port.

CLECAT members believe that port accounts should be made more transparent and charges paid for by the port users clearly based on the costs (fixed and variable costs) of the facilities and equipment used. CLECAT would welcome if the Commission would call for more clarity on the different items that compose port dues, as well as on more transparency in their relation with relevant costs.

Also, it appears that some criteria for tarification would discriminate ships used for short sea shipping and this should be overcome.

### ***Port efficiency and performance***

Ports can attract freight forwarders due to their high levels of efficiency regarding productivity and reliability of port services. Productivity measures (i.e., the number of container movements per hour per crane) are useful if speed of handling is imperative, but the following performance related issues are equally, if not even more important:

- Time of loading as agreed;
- Estimated time of vessel arrival vs actual time of arrival;
- Time taken to clear freight for import;
- Time the freight is picked up vs planned time of pick up.

Focusing on performance requires improved communication processes and procedures between carriers and ports, shippers, freight forwarders and logistics operators, road, rail, coastal/short sea and inland waterway operators.

### ***Administrative and control procedures***

Smooth and uninterrupted flow of goods in and out of ports is a prerequisite of time-efficiency and predictability. The efficiency of national and local administrative and control procedures has a major impact on a port's performance and is a factor in inter-port competition.

This calls for harmonisation at EU level of administrative and control procedures and practices. CLECAT is in favour of harmonisation or approximation of administrative and control procedures and practices where this facilitates and simplifies trade. However, harmonisation is not an end in itself.

Administrative and control procedures in ports, and the services that customs and other regulatory authorities offer to their trader customers, should be streamlined along best practices. CLECAT is of the opinion that some form of competition in public performance and efficiency is possible without compromising the public task.

This can be achieved by, inter alia:

- An increased focus on potential illicit trade while facilitating movements controlled by accredited trusted traders (AEO);
- Further development and improvement of electronic communication within the port community, among ports and among national authorities;



- Further developing single window solutions/single access points for the provision of information and one-stop shops for customs and other controls.

The e-maritime proposal could be a useful tool for exchanging information between business and administrations; however, it requires a high degree of integration between messaging and data sets. CLECAT would remind the Commission not to overlook the potential costs of developing and installing new systems, new procedures and new data sets that might be required, or the costs of making modifications to existing systems.

Finally, our members have advised us on the large number of inspections in some European ports, especially in new EU Member States, carried out by many appointed institutions. The inspections should be consolidated and standardized and the European Commission should settle the deadline for every Member State to do so. With no such deadline settled, the Member States that impose numerous and arduous inspections at their ports are not sufficiently motivated to simplify and standardize them.

### ***Conclusion***

In view of the important role that ports play, as facilitator of an overall seamless multimodal network, CLECAT welcomes the Commission's recent initiatives aimed at reviewing EU ports policy. To that end, we look forward to contributing to the new consultation that invites stakeholders to provide input in assessing the direction and necessary measures needed for future developments in this policy area. By addressing the abovementioned bottlenecks, brought on through certain inefficiencies and non-competitive structures within ports, we will be able to come one step closer to revitalising the European economy and facilitating fair and open competition in this important freight transport sector.