

POSITION PAPER

on the Communication (COM (2013) 295 final - Ports: an engine for growth and the Regulation (COM (2013) 296 final – on market access to port services and financial transparency of ports

Summary

CLECAT supports the following '*soft measures*' proposed:

- Measures such as the strengthening of the TEN-T network to identify priority investments under the "Connecting Europe Facility".
- Measures to support administrative simplification in ports.
- Measures to clarify EU State aid rules
- The promotion of the European Social Dialogue.

CLECAT supports the following '*Regulation Proposals*' proposed:

- 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.
- Measures to control the allocation of public service obligations (PSO).
- Measures in support of transparent open procedures to select providers of port services.
- Measures requiring the establishment of a **port users' advisory committee** 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.
- Measures in support of a **customer-focused approach** through the establishment of Managing bodies which will also be required to consult stakeholders on broader issues, such as the coordination of port services, hinterland connections and administrative procedures.
- Proposals to address unfair competition in ports through restrictive practices, market entry barriers, and lack of transparency in the use of public funds.

CLECAT calls on the European Commission to address the following '*remaining issues*' by further actions:

- Measures to liberalise cargo handling. The above provisions will not be imposed on cargo handling services which will continue to be dealt with through concession contracts.
- Initiatives to develop generic indicators of European port performances.
- Initiatives to further simplify the administrative procedures in ports, for example through the development of administrative performance indicators.
- Initiatives to promote through the new TEN-T guidelines multimodal hinterland hubs connected to the ports and attracting investments.
- Initiatives to address restrictive labour practices.



Introduction

CLECAT, the European Association for Forwarding, Transport, Logistic 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 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 Ports Policy.

On 23 May 2013, the Commission adopted a communication reviewing the objectives of the EU Ports Policy. The communication proposes eight measures and is accompanied by a proposal for a regulation by the Parliament and Council which seeks 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. Through these tools the initiative seeks, *inter alia*, improving the performance of ports in all EU maritime regions. In general the initiative seeks to address the current sub-optimal *port operations* and *port governance issues*.

CLECAT agrees with the Commission that poorly performing ports, in particular ports which are part of the TEN-T network, handicap the sustainable development of the EU Transport system as a whole and impact negatively on economic growth prospects. Europe is highly dependent 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. Well performing ports and port services are crucial to ensure an efficient and sustainable transport system. In view of this, CLECAT welcomes the Review of EU policy on ports which seeks to address these shortcomings.

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 feel that a 'soft law' approach only is not enough and that there is a role for the EU in creating conditions of enhanced competition within ports and between ports.

Communication

CLECAT has repeatedly raised concerns over the lack of infrastructure, especially connecting roads, rail and inland waterways with port areas. On the land side, reliable and sustainable hinterland connections are key to a port for achieving 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 their full operational potential.

CLECAT welcomes the fact that the Communication confirms 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.

CLECAT also welcomes the Commission's intention to further address administrative simplifications. The efficiency of national/local administrative and control procedures have a major impact on a port's performance.

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: state aid, whilst supporting development can impact on competition to the detriment of those private enterprises not in receipt of such aid.

The legislative proposal

The Freedom to provide services

The Proposal for a Regulation establishing a framework on market access to port services and financial transparency of ports states that the principle of freedom to provide services applies to all forms of service provision in all TEN –T ports. 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) 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. CLECAT welcomes the balanced approach put forward by the Commission's proposals to ensure fair competition. Previous 'soft measures' had no effect on fair market access and transparency. In addition, CLECAT welcomes the fact that the Commission has proposed clear justifications for any restrictions which have to be transparent and proportional.

Port user committees

CLECAT welcomes the fact that users must be consulted (through the port users' advisory committee) on the coordination of port services, charges, hinterland connections, administrative simplification and other relevant issues. This will ensure that the real needs of the port service users are taken into account, which will improve the performance and quality of services of ports. The proposed Port user committees are a useful tool to create 'meetings of minds' rather than as adversaries and help facilitate initiatives and best practices that may emanate for others to adopt.

CLECAT considers that there may be a need for the monitoring and the supervision of the application of the regulation by the independent supervisory body referred to in Article 17.

Financial transparency

The Commission has incorporated a number of articles into the regulation which promote financial transparency and autonomy. These provisions include requiring port authorities to provide information on public funding received and to maintain separate accounts for this where the managing body of the port provides port services itself. CLECAT endorses these proposals. In the end, port tariffs and charges for the use of port infrastructure must be transparent and relevant, especially if the port managing body receives public funds.

Remaining issues

Restrictive practices

CLECAT is aware of the fact that the situation with regards 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, and amount to what is in effect a 'closed shop' where service providers may not select the personnel of their own choice. This was also acknowledged by a recent study on port labour. Therefore CLECAT remains convinced that where restrictive practices exists, 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 in cargo handling.

Funding

Freight forwarders require ports and services and associated infrastructure to be provided where demand determines; 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 continue to believe that the TEN-T projects should be subject to a rigorous cost/benefit analysis.

Port efficiency and Performance

Ports can attract freight forwarders due to their high levels of efficiency regarding productivity and reliability of port services. CLECAT supports the development of a dashboard in projects such as PPRISM which contains indicators and measure performance trends in the European port sector. However, in order to become more meaningful for stakeholders these indicators should equally focus on the performance of individual ports or terminals, and not only on the performance of the port system or community as a whole. CLECAT would welcome the introduction of administrative performance indicators.

Administrative and control procedures

CLECAT is of the opinion that the gain of efficiency in ports could be jeopardized by ineffective and burdensome administrative procedures. This is even truer regarding customs procedures which are still causing important delays in certain European ports. The large number of inspections in some European ports carried out by many different authorities, especially in new member states of the EU, needs to be addressed with the aim to reduce them through consolidation and standardization.