

## **The European Voice of Freight Logistics and Customs Representatives**

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Brussels, 3<sup>rd</sup> December 2007

### **European Commission's Communication on a European Ports Policy**

#### **INTRODUCTION**

The key role of ports in the logistics chain and, more generally, in the EU economy called for a number of clarifications on the legal framework surrounding ports, their operators and users, and governing their organisation, operations and development.

A few months ago, CLECAT described the main objective of an EU port policy as *"the maintenance and development of ports' performance commensurate with respecting environmental and social constraints, as well as the diversity of local/national situations across the EU"*<sup>1</sup>. From this point of view Clecat identified the former proposals made by the Commission as an instrument to encourage excellence in the performance of all EU ports – and not only in the recognised "upper crust" – by creating conditions of enhanced competition within ports and between ports.

We believe that in setting the principles of a new EU port policy, the European Commission has tried to strike a balance between these various requirements and provide at least a certain degree of legal certainty where it was lacking.

From a more specific point of view, CLECAT, on the basis of opinions already expressed during the consultation process, would like to comment on the various initiatives contained in the present Communication and relevant to the freight forwarding and logistics sector.

#### **COMMENTS**

##### **1- Port performance and hinterland connections**

CLECAT has always made very clear that one of the main objectives of a European port policy should be to avoid concentration of traffic at a few ports. For the European port system to successfully absorb the rise in traffic, port development and use must occur harmoniously all over the EU territory. The Communication's aim to *"achieve a more intensive use of all existing ports"* is therefore supported.

As far as port efficiency and productivity rates are concerned, CLECAT acknowledges that some improvements could be made. However, the main bottleneck remains infrastructure, which is already reaching its limits in the major EU ports. Port development is indeed first and foremost a national/local matter, which should involve all stakeholders. The EU, however, also has a role to

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<sup>1</sup> See [CLECAT contribution to the consultation on a future EU seaport policy](#)

play by making sure that a clear and transparent framework is in place so as to create a 'legal level-playing field' in which ports can develop. Guidelines on state aid to ports or guidelines on the application of EU environmental legislation to port development are among the tools to achieve such aim. The Commission's proposal to undertake an evaluation on hinterland connections could also prove useful in providing ports and relevant national/local authorities with information for investment planning.

## **2- Expanding capacity while respecting the environment**

### **Development of new, or improvement of existing facilities**

Although the Communication identifies several factors to justify a need for port capacity development, CLECAT believes that the expected increase in port traffic, together with the fact that port capacity has reached its limits already, is by far the main factor requiring additional capacity urgently. Ports are the main point of entry and exit of EU trade and the failure to address the problem of congestion would have catastrophic effects for the whole Community. Making sure that ports can continue playing their role is therefore the primary objective.

We take the view this should be an objective commonly shared by both public and private parties. It must also transcend modal differences for one simple reason: in international transport ports capacity and efficiency affect directly the performance of all transport modes other than the transportation of goods by air. CLECAT therefore regrets that a so-called '*sustainable modal shift away from road*' has been identified as one of the reasons for actions in favour of additional port capacity. Even in the context of Motorways of the Sea, such statement is counter-productive insofar as it puts road and (intra-European) sea transport in contrast, whilst cooperation and supplement should be fostered rather than confrontation. We maintain additional port capacity is a paramount necessity which stems from the sheer observation of numbers.

This said, CLECAT welcomes the European Commission's intention to issue guidelines on the application of EU environmental legislation to port development. Recent practice has shown that the implementation of environmental legislation in the context of port development was unclear and the guidelines will provide one single interpretation and thereby the necessary legal certainty currently lacking. One could however regret that there is no time indication as to the expected publication of these guidelines. In view of some pending port development projects, such indication would have been advisable.

### **Improve air emissions**

Decreasing the environmental impact of shipping is an objective that can only be supported. CLECAT awaits further clarifications on the measures envisaged and their economic impact.

## **3- Modernisation**

### **Simplification of procedures for short sea shipping**

Short sea shipping has grown steadily in the last years. However, intra-European maritime transport remains impeded by administrative procedures and controls, the fulfilment of which usually involves different competent authorities and has to be repeated in each port. CLECAT therefore welcomes any initiative aimed at releasing the full potential of short sea shipping.

The concept of Common European Maritime Space would seem to allow for simplification and rationalisation necessary to achieve a true internal market in intra-European maritime transport. CLECAT will do its best to actively contribute to such process.

## **Development of an e-maritime approach**

e-maritime would be a valuable notion for procedure simplification purposes. Although we are talking about a project for the longer term, CLECAT believes that it is worth investigating further, in light of initiatives undertaken at international and European level and possibly within the concept of Common European Maritime Space.

Additional remarks are available on the Clecat reply to the Commission's Communication on logistics, which is available on Clecat website ([www.clecat.org](http://www.clecat.org)).

## **Improving performance**

The contribution of technological innovation to port's performance indeed justifies some assistance through Research Framework Programmes.

CLECAT also agrees that cooperation between ports, as long as it is done in full respect of EU competition law, can bring benefits, for instance in the common development and use of hinterland facilities. As regards ports' specialisation in certain ships or cargoes, it may indeed provide some ports with a competitive advantage, but such process should however not spread too widely in order to avoid the risks of a quasi-monopolistic concentration of interests and traffics at certain ports.

Generic indicators are a valuable tool in order to provide more transparency and act as an incentive for operators to improve their performance. This said, the structure of the logistics chain and the close links between its components make that the performance of one segment may be directly affected by / dependent upon the performance of another segment. This characteristic calls for indicators that would cover the entire chain in order to have a complete overview and an accurate evaluation.

## **4- A level-playing field – clarity for investors, operators and users**

### **The role of port authorities**

As port users, forwarders and logistics service providers only request transparency, non-discrimination and neutrality in port management. CLECAT appreciates the fact that the difference of port management structure across the European Union makes it impossible to impose or even suggest an ideal and harmonised system. The solution of leaving it to national/local level is therefore preferable.

### **Public financing – transparency**

Transparency in port financing is a prerequisite to ensure fair competition between ports in Europe. CLECAT welcomes the Commission's intention to ensure that all the necessary conditions are present. We believe that the publication of guidelines on state aid to ports and the extension of the provisions on transparency of Directive 2006/111 to all merchant ports are the right solutions to achieve such goal.

### **Port concessions**

CLECAT appreciates the fact that, in the absence of specific legislation on concessions in seaports, the latter are still subject to the rules and principles of the Treaty, and in particular, transparency, non-discrimination and fairness.

As regards the duration of concessions, it is clear that, as pointed out in the Communication, it must be long enough to encourage investments and a return thereon whilst not becoming a hidden means to limit competition. The fact is that whilst this principle is accepted by all parties, its practical application is subject to extremely diverging interpretations, which go well beyond

local specificities. In order to provide some guidance, CLECAT has called for an assessment of the application of EU competition and internal market legislation to seaports, in which concessions could have been tackled. CLECAT regrets that the European Commission does not intend to undertake such assessment. In the coming years, it may happen that the European Court of Justice be required to set the boundaries of port concessions, on a case by case basis.

### **Technical-nautical services**

Since CLECAT members only have an indirect interest in these services, we believe other stakeholders are better placed to express their views on this subject.

### **Cargo-handling**

Despite the rejection of a uniform EU solution proposed by two successive Directives on market access to port services, CLECAT does not think that the fragmented regulation of cargo-handling services through case law would provide a satisfactory answer. This is the reason why we called for an assessment of relevant EU competition and internal market legislation. The provision of clarifications through guidelines would have been a useful compromise.

In the absence of such a solution, and as in the case of concessions, the European Court of Justice may be questioned in order to establish the principles according to which Treaty rules on freedom of establishment and freedom to provide services apply to cargo-handling services.

### **Competition with third countries**

As expressed in its previous position<sup>2</sup>, CLECAT believes that the EU neighbouring policy and other EU external relations are the right fora to discuss competition issues with non-EU ports. The solution envisaged by the Communication is therefore fully supported.

## **5- Establishing a structured dialogue between ports and cities**

Since these matters clearly fall outside CLECAT scope, we believe other stakeholders are better placed to express their views on this subject.

## **6- Work in ports**

### **Dialogue**

Logistics service providers and forwarders are usually active in port committees where the latter exist. Based on this experience, CLECAT advocates the involvement of the sector in the activities of a European sectoral social dialogue committee, where appropriate.

### **Training**

The establishment of a mutually recognizable framework on training of port workers should indeed be included in a comprehensive EU port policy. CLECAT would also welcome some degree of coordination with the planned initiatives on training included in the Freight Logistics Action Plan.

### **Health and safety at work**

CLECAT supports the full and correct implementation of existing EU and national rules on health and safety at work.

## CONCLUSION

In the last year, the European Commission has undertaken a deep and comprehensive assessment of all the issues European ports have to deal with in their management, operations and development. Every relevant topic has been discussed and every interested party has had the opportunity of expressing its concerns, proposing its solutions and confronting its views.

We believe that the present Communication largely reflects the consensus that has emerged among stakeholders on a number of points. In particular, we are of the opinion that the variety of structures and schemes according to which ports operate is accurately addressed.

Two longstanding requests from the industry (guidelines on state aid to ports and guidelines on the application of Community environmental legislation to port development) have found a positive echo from the European Commission. On the other hand, CLECAT regrets that in some cases, the Commission limited itself to restating the application of general EU Treaty principles, whereas a specific legal assessment of the situation through guidelines would have proven useful. In the coming years, this assessment may be carried out by the European Court of Justice, on a case by case basis. In such circumstances, the establishment of an EU framework may become necessary in order to fill the gaps of a (by definition) fragmented case law.