Liberalisation of EU port services: state of play

SUMMARY

Serving as access points to the continent, Europe’s approximately 1 200 seaports are crucial to both the European transport sector and the competitiveness of the European Union (EU). They also have significant potential for creating jobs and attracting investors.

There are huge disparities in performance levels between the various EU ports, however, and this has resulted in traffic diversions, longer journeys by sea and by land, and, consequently, higher CO₂ emissions. The European Commission plans to resolve this situation through its latest proposal to liberalise port services in the EU’s 319 main seaports.

Two attempts at liberalisation (in 2001 and 2004) have already ended in failure, mainly on account of the social component and the subsequent docker strikes. Under the new proposal, cargo handling and passenger services will therefore not be opened up to the market. Instead, the Commission is focusing its efforts on establishing a clear framework on market access to port services and common rules on financial transparency and the charges to be imposed by port service managing bodies or providers.

The Council has already adopted a general stance, but Parliament will not return to the issue again until spring 2015. Despite this, the draft submitted by the rapporteur in November 2013 bore some similarities to the Council’s position. A number of stakeholders have also given their thoughts on the proposal, although the only point on which they agree is that the current situation is unsatisfactory.

In this briefing:

- Background
- Why reform port services?
- Latest European Commission proposal
- The Council’s view
- Parliament’s position
- Stakeholders divided
Background

Europe is one of the most dense port regions worldwide. More than 1,200 seaports operate along some 70,000 kilometres of the Union’s coasts. 74% of imports and exports of cargo and 37% of EU trade transit through these ports, making them crucial to businesses.

The port sector is hugely significant to the economy of the European Union (EU). It brings together a broad range of industries, such as petrochemicals, steel, automotive, manufacturing and energy distribution. Ports are also central to the economic activity of maritime businesses, including naval shipyards, marine equipment companies, crane and terminal equipment manufacturers, marine rescue organisations, coastal companies, marine construction firms, dredging companies, naval bases, etc.

In the Netherlands, for example, port activities account for up to 3% of gross domestic product (GDP).

What is more, more than three million people are employed directly or indirectly by the ports in the 22 Member States with a coastline (see detail, Figure 1). In 2011, 385 million passengers and 3.7 billion tonnes of cargo passed through EU ports.

However, there is a considerable imbalance between the volumes handled in the north and the south of the EU. In 2012 the three largest EU ports, Rotterdam, Hamburg and Antwerp, accounted for 20% of cargo movements alone. They are still a long way behind the Chinese ports at the top of the world rankings, however (see detail, Figure 2). In contrast, the combined activity of nine of the EU’s largest Mediterranean ports comprises less than 15% of the total. This is partly due to north-west Europe’s proximity to major production and consumption markets.

Maritime transport costs are relatively low, which has led to increased demand and attracted investors to port infrastructure. Alongside this increased interest, considerable efforts have been made in the field of technological development, social accommodation, land acquisition and port management; this underscores the need to reconcile development with greater transparency and closer adherence to EU rules on competition and State aid.
Why reform port services?

Significant challenges still to overcome
The Commission has already identified the challenges that the sector needs to overcome in its communication of 2007, which outlines issues that pose a threat to port performance (e.g. unsatisfactory terminal layout, inefficient access from sea or land and administrative formalities which are costly in terms of time and money) and connections with the hinterland, the need to modernise ports while preserving the environment, the lack of transparency in the use of public financing, market access restrictions and the way work in the ports is organised.

The Commission’s approach as adopted in 2007 consisted of tackling these problems through horizontal instruments and soft measures on port service market access and financial transparency. Since then, even though the situation has changed and some progress has been made (see insert), the Commission believes that the problems identified in 2007 are still relevant today and the soft measures ‘have had little or no impact’.

Meanwhile, according to the latest forecasts, in a low-growth scenario the volume of cargo transiting through EU ports should increase by 50 % by 2030. As mentioned above, however, efficiency and productivity varies greatly between EU ports and according to the Commission, the gap has grown even wider in recent years. These performance deficits have caused a number of problems, including longer journeys by land and by sea, increased CO₂ emissions, owing in particular to road transport in the hinterland, and congestion risks that harm both individuals and the EU economy.

The fact that the port sector is constantly evolving means that infrastructure requires significant upgrades to meet the ever-changing needs of the transport and logistics sectors. In its latest communication on EU ports (2013), the Commission identified a number of trends. Firstly, the size and complexity of the fleet have increased considerably, especially in view of the advent of ultra-large container ships, new types of Ro-Ro ferries and gas carriers. Larger ships require greater peak capacities when they are unloading their cargo or embarking a higher number of passengers. Secondly, key developments in energy exchanges, with a trend for substituting oil and refined products with gas and alternative fuels (such as liquefied natural gas or LNG), have made it necessary to equip ports with large gasification facilities.

In addition, as service providers, ports are key infrastructure for the whole economy, and can serve as an access point for illegally-trafficked drugs, weapons, contraband goods and even chemical, biological, radiological and nuclear materials. Port safety thus requires the utmost vigilance and is governed by strict EU legislation.

Unused financing and synergies
In 2012 the Court of Auditors noted that the €6 billion from Structural Funds invested in EU port facilities since the year 2000 had only generated limited added value. Only one-
third of the projects audited actually met the objectives of the transport policy. Worse still, none of the regions audited had a long-term port development plan in place and no needs assessment had been carried out. Similarly, monitoring and supervision were focused on the rate of spending, whereas the results and impact of the infrastructures were not monitored and empty ports and unused seaport infrastructures were found.

Unsuccessful attempts at liberalisation
Following the publication of a Green paper which was the first step towards a harmonised port policy, in 2001 the Commission published a communication on reinforcing service quality in seaports. The communication was accompanied by a proposal for a directive on market access to port services. Faced with strong opposition from port service providers, the negotiations were extremely tough. After almost three years, despite the fact that a compromise appeared possible, Parliament rejected the proposal. In 2004 the Commission submitted a new proposal for a directive on market access to port services. In addition to the objectives laid down in the first proposal, it also aimed to force the port authorities to demonstrate greater transparency in the way they manage their accounts and allocate revenue (especially State aid) and expenditure. However, strongly divergent views were still expressed in the debates in plenary and in 2006 the proposal was in the end rejected again, as a result of which the Commission was forced to withdraw it.

Latest European Commission proposal
In 2013 the Commission presented a new package of measures designed to liberalise port services. It consists of a regulation and a communication. The first issue that the Commission’s new proposal will tackle is the need to correct the huge disparity in performance of ports in the trans-European transport network (TEN-T, see insert). The Commission has identified 319 main seaports that are essential to the functioning of the internal market (see detail, Figure 3). The Commission’s proposal is based on these ports, which form the core of a high-performance European network that handles 96% of cargo and 93% of passengers transiting through EU ports. Its main objective is to make these ports more efficient in order to better distribute flows in preparation for the significant growth which has been forecast.

Market opening
The Commission proposes to guarantee the freedom to provide services in these ports through the introduction of more transparent procedures for hiring service providers. According to the Commission, the increased competition should ensure more reliable, better quality services. The new rules proposed aim to guarantee financial transparency and introduce calls for tender for eight port services in TEN-T seaports. The port managing body may however cite the scarcity of land and public service providers.

The trans-European transport network (TEN-T)

Launched in the 1990s, the TEN-T has gradually grown into an EU transport infrastructure development policy. It aims to establish and develop the key interconnections that are needed to remove bottlenecks and complete major routes (in particular cross-border sections) with a view to improving interoperability.

Of the EU’s 319 main seaports, 236 are recognised as being part of the comprehensive network, to be completed by 2050, which will provide for total EU coverage and make all regions accessible. The remaining 83 ports are part of the core network, to be completed by 2030, which will feed into the comprehensive network and will prioritise the most important nodes of the TEN-T. The criteria for selecting TEN-T ports are laid down in the regulation on Union guidelines for the development of the TEN-T.
(Article 6) to limit the number of providers of a single service. The services covered under the proposal are in particular pilotage (where a boat is guided into and out of a port by a pilot), towage, dredging (clearing sand away from access paths), mooring (the operations for connecting the ship to the quay), refuelling, waste collection, cargo handling and passenger services. The latter two services will not be opened up to competition, but a regulatory framework applying to them is defined in the directive on concessions.

**Enhancing transparency**

The Commission also proposes to give the port authorities more autonomy, in particular over setting charges and allocating resources. However, this increased autonomy over port management will be offset by checks made by an independent authority to ensure that competition is being maintained and port development is coordinated at national and EU level. The proposal also aims to increase transparency over the use of public funds. The port authorities will not be required to publish detailed accounts, but they will have to be able to provide this information to the national and EU monitoring authorities.

**Intermodality**

Moreover, the Commission will check whether the 319 main ports are well connected to the rest of the continent’s logistics chain. The Connecting Europe Facility financing (see insert on p. 6) should help to turn ports into transport hubs with connections to rail, river and road networks. The Commission also hopes to see short-distance maritime transport increase to 8% and create a significant number of new jobs.

**Social dialogue**

It is worth remembering that the last two packages (2001 and 2004) mainly failed on account of the **social component**, in particular its impact on dockers’ work. This time, the Commission has confined itself to a non-legislative approach to the social component with a view to promoting discussion. It is planning to set up a social dialogue committee for ports, where employees and employers can meet and discuss problems relating to port labourers’ working conditions. In 2016 the Commission will assess how much progress has been made and then formulate legislative proposals. According to the Commission, around 70 000 new jobs could be created by 2030 as a direct result of the predicted increase in port activity.
The proposed regulation is expected to enter into force in 2016. However, a transition period lasting until 2025 is planned for currently valid contracts. According to the Commission, this initiative should enable the EU to save almost €10 billion by 2030 and lower port costs by almost 7%.

### Financing port infrastructure

The cost of the first phase of implementing the TEN-T core network by 2020 has been estimated at €250 billion. Although most of the investment will be directed towards rail and road networks, a number of projects also relate to maritime transport. In addition, in accordance with the regulation on Union guidelines for the development of the TEN-T, the Member States are required to provide the infrastructure for major EU projects of common interest. Only €26 billion is currently set aside for this purpose in the EU budget, through the Connecting Europe Facility, the remainder must be supplied via public investments.

However, raising Member State deficits is not a viable option at a time of crisis. With that in mind, EU transport ministers held an informal meeting in September 2014 to discuss the principles for implementing Article 126 TFEU in connection with the Stability and Growth Pact, in particular its ‘investment clause’. The Italian Presidency suggested reviewing the way in which investments are taken into account, and the French delegation gave their backing to the idea. However, the Dutch and British delegations did not share this view, and the German delegation did not express its opinion on the matter.

A report on the most suitable financial instruments is expected to be presented to the ministers at the Transport Council meeting on 3 December 2014.

### The Council’s view

Since the beginning of the negotiations, the Council has expressed concerns on the substance and form of the legal instrument. The Member States would thus have preferred a directive or even a ‘soft law’, e.g. guidelines, over a regulation. The concerns regarding the substance focused on areas such as the scope of the future regulation as regards the services and the types of port that the legislation will cover.

In the end, the Council opted for a custom approach by restricting the scope of the future regulation. The ministers decided that all services will be subject to the financial transparency rules, but some will not have to be opened up to competition. Specifically, they chose not to consider dredging to be a port service, but decided that it should remain subject to the rules requiring separate accounts. The same is true for pilotage, which will not be subject to the market access rules unless a Member State chooses to apply them. Pilotage will be subject to the financial transparency rules, however. The ministers also suggested that considerations of safety, security and environmental protection be included as grounds for limiting the number of service providers.

Finland, the Netherlands, Estonia and Spain did not share this approach, as they wanted stricter rules. Spain in particular would have preferred passenger services and cargo handling to be opened up to competition given their economic importance. Conversely, Lithuania would have preferred dredging to be excluded from the new regulation. The Member States also decreed that ports located in the outermost regions, such as Réunion and the Canary Islands, will be excluded from the scope of the regulation. The Member States may also decide not to apply the rules on the separation of accounts to certain small ports. The Committee of the Regions had especially proposed this approach and was delighted to see it taken into account.
Parliament’s position

In November 2013 Knut Fleckenstein (S&D, Germany), rapporteur of the Committee on Transport and Tourism (TRAN), submitted a draft report. Following the Council’s example, the rapporteur declared that pilotage should not be subject to competition and also suggested that dredging be excluded from the scope of the regulation. In addition to the scarcity of land and public service obligations, he suggested that three other criteria be taken into account as valid reasons for reducing the number of service providers (size of the market, port capacity and the environment). He also recommended that the ports be given a certain amount of freedom to determine their own tariffs. Lastly, the rapporteur stated that the existing control authorities could carry out ‘independent supervision’. However, Parliament is not expected to return to the issue until spring 2015, the main reason being the revision on the guidelines on State aid (see insert), which could have an effect on port practices. The Commission is currently analysing Member States’ responses to a public consultation on State aid to promote important projects of common European interest, including the TEN-T projects.

It should be borne in mind that, owing to a lack of time and the fact that a number of essential issues were outstanding, the TRAN Committee decided not to vote on the report before the European elections. Incidentally, seven national parliaments submitted a reasoned opinion on the proposal for a regulation (Belgium, France, Latvia, Malta, Poland, Spain and Sweden).

Stakeholders divided

The consultations held during the process of preparing the proposal reveal that 35 % of stakeholders believe that the current situation is unsatisfactory. Opinions differ regarding the best strategy for improving matters, however.

When the proposal was announced, the European Community Shipowners’ Associations (ECSA) complained about the fact that passenger services and cargo handling are set to be excluded from the future regulation. More recently, it reiterated its fear that the Council and Parliament are watering down the Commission’s proposal and turning the port reform into little more than an empty shell. In view of the above, ECSA Secretary-General Patrick Verhoeven admitted that ‘the EU shipping industry’s interest in supporting this proposal is indeed very limited’. Although shipowners are not calling for the port package to be withdrawn, they do want Member States to reconsider their approach to ensure that the reform is capable of improving transparency and efficiency in ports. In contrast, FEPORT, the organisation which represents the interests of operators of private terminals, highlighted the competitive nature of cargo handling services and welcomed the fact that these services would not be opened up to competition, as the Council recently confirmed. In addition, it recommended that the proposal’s main objective should be to protect port operators from potential legal uncertainties and excessive administrative burdens. The European Sea Ports...
Organisation (ESPO) acknowledged that some progress has been made in its opinion, in particular in the exclusion of dredging from the scope of the proposal and the simplification of the complaint handling procedure, but it denounced the watering down of ports’ autonomy to set their own charges.

Endnotes

1 Unless stated otherwise, all the statistics cited in this section are taken from the proposal for a regulation COM (2013) 296 final.

2 According to the European Commission, 2 200 port operators currently employ around 110 000 dockers.

3 Twenty-foot equivalent unit (TEU) is an inexact measure of container capacity. Standard TEU containers have a volume of around 33 cubic metres – sufficient capacity to move the contents of a small house, for example.

4 The Danish company Maersk Line, a global leader in maritime container transport, has commissioned 20 ships with a capacity of 18 000 TEU for 2015 – the equivalent of a train loaded with 280 km of containers (the distance between Rotterdam and Düsseldorf). These 400-metre-long Triple-E class ships, which are energy efficient, more environmentally friendly and provide economy of scale, should make it possible to halve CO₂ emissions per container transported compared with the average for ships currently used on Asia–Europe lines.

5 The Clean power for transport initiative and the proposal for a directive on the deployment of alternative fuels infrastructure require all seaports on the TEN-T core network (see insert on p. 4) to be equipped with LNG refuelling points by 2020 that comply with common technical standards.

6 Directive 2005/65/EC and regulation (EC) No 725/2004 call for the Commission, in collaboration with the Member States, to carry out inspections to ensure that the relevant safety measures are being applied in EU ports. In view of the above, on 25 September 2014 the Commission instigated proceedings against Spain before the EU Court of Justice, as 20 Spanish ports have yet to adopt and implement the safety plan laid down in the directive.

7 The Commission defines them as ‘those services of commercial value that are normally provided against payment in a port’.

8 At EU level they are usually referred to as services of general (economic) interest. They are defined in the Commission’s Green Paper (2003) as ‘market and non-market services which the public authorities class as being of general interest and subject to specific public service obligations’.

9 In July 2013 the Commission announced that it was exploring ‘ways to accommodate non-recurrent public investment programmes’. States which are not subject to an excessive deficit procedure will thus be allowed to temporarily deviate from their medium-term structural deficit reduction path on a case-by-case basis. However, ‘such a deviation must be linked to national expenditure on projects co-funded by the EU under the Structural and Cohesion policy, Trans-European Networks or Connecting Europe Facility with a positive, direct and verifiable long-term budgetary effect’. Parliament declared these measures to be insufficient and in a resolution of October 2013 called for ‘public expenditure related to the implementation of programmes co-financed by the European Structural and Investment Funds to be completely excluded from the definition of Stability and Growth Pact structural deficits’.

10 Since the entry into force of the Treaty of Lisbon, national parliaments have been entrusted with safeguarding subsidiarity to ensure that the EU does not exceed its competences. Protocols 1 and 2 of the Treaty outline the early warning mechanism whereby if one third of national parliaments are of the view that a proposal fails to comply with the principle of subsidiarity the Commission must re-examine it.

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