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on ECA Special Report 23/2016 (2015 Discharge): Maritime transport in the EU: in troubled waters - a proper development of ports failed due to ineffective and unsustainable investment

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Introduction

Ports are economically very important in the European Union. There are more than 1200 commercial seaports in 23 of the EU's 28 Member States. They are the key nodes in the global trade network: they handle around three quarters of the EU's cargo trade with non-member countries and more than a third on intra-EU freight transport.

For more than two decades, the EU has had in place a policy to support the development of ports and their infrastructures as a way to improve mobility. Since then, investments in port infrastructure, multi-modal terminals and interoperability have been considered key to increasing sustainable mobility in Europe.

In 2013, the European shipping industry is estimated to have contributed up to 147 billion euros (or around 1%) to the EU's GDP. It also supported employment for an estimated 2.2 million people. Ports also play an important role in linking islands and peripheral areas with the main land.

The ports sector is very heterogeneous with significant differences in size, type, organisation and in how they are connected to their hinterlands. In recent years, some 96% of all freight and 93% of all passengers transiting through EU ports do so through the 329 key sea ports identified as essential to the functioning of the internal market in the EU Guidelines on the Trans-European Transport Network (TEN-T). These key ports also have considerable differences among them.

The increased size of ships resulted in lower costs, increased operational efficiencies and improved environmental footprint. This has had a cascade effect: smaller ships became redundant and the new larger ships require new infrastructure and impact on competition between port authorities and port operators.

Port services include the provision of: general transport infrastructure and ancillary infrastructure equipment; technical nautical services, such as pilotage, towing and mooting; operational infrastructure and 'superstructures' which are usually provided by terminal operators; and passenger-handling and cargo-handling services.

In 2013, the Commission issued a communication, including an action plan[1], identifying a number a recent maritime transport trends, which often require significant upgrades of existing port infrastructure. Furthermore, the Commission presented a legislative initiative[2] aimed at making the port services market more easily accessible and establishing common rules on financial transparency and on the charges to be applied by managing bodies or providers of port services. The Council adopted a provisional position on this proposal in October 2015 and the Parliament approved its provisional position in March 2016, paving the way for a future agreement.

In order to overcome the distortion between transport modes, where the shipping is disadvantaged by the fact that beyond 12 nautical miles from the shore a ship is considered as moving out of the EU customs territory - even if it has departed and arrived at EU ports, the

[1] COM(2013) 295 final of 23 May 2013 - 'Ports: an engine for growth'.
[2] COM(2013) 296 final of 23 May 2013 'Proposal for a Regulation of the EP and the Council establishing a framework on market access to port services and financial transparency of ports'.

Commission issued a communication on measures to simplify administrative and customs formalities (the ‘Blue Belt’ initiative), which led to changes in customs legislation. The setup of national centralised points for reporting data is ongoing for transport reporting formalities. In parallel, electronic customs systems are being developed over a transitional period lasting until 2020, in order to gradually adapt to the new modernised Customs Code requirements.

The funding of infrastructure that is not to be economically exploited does not constitute state aid within the meaning of Article 107(1) of the Treaty. However, the funding of port infrastructures fall under the state aid rules. Financial support granted to port authorities may distort competition between ports. This may also be true of indirect aid to the economic operators and users if they do not pay market price for port infrastructure. Any state aid needs to be reported to the Commission so that its compatibility with the internal market can be assessed. Furthermore, the Commission is currently considering defining non-problematic investments in port in the ‘General Block Exemption Regulation’ which defines cases when state aid can be granted to companies without notifying the Commission in advance.

The vast majority of port authorities in Europe are publicly owned. The port authority owns the basic infrastructure and leases it out to port operators, which are private companies with their own superstructure. Port authorities generally have limited autonomy in setting port charges but they nonetheless bear a significant share of the investment responsibilities, in particular in adapting to the increasing trend for mega-ships.

Investments in port infrastructure have been co-financed from the EU budget through the European Regional Development Fund (ERDF) and the Cohesion fund (CF) under shared management, but also through the Trans-European Networks - Transport (TEN-T) programme and the Connecting Europe Facility (CEF) under direct management. Overall, between 2000 and 2013, around 6.8 billion euros of funding was provided from the EU budget for investments in seaports.

For the 2014-2020 programming period, the CEF has an indicative amount of 24 billion euros to co-fund transport investments either under direct management or using financial instruments (delegated to the EIB). Maritime transport projects, including investments in port infrastructure and in Motorways of the Seas (MoS) are eligible for this funding. Up to 900 million euros have been earmarked for MoS projects, while projects for the comprehensive network and projects for freight transport services will have respective budgets of up to 1 billion euros and 200 million at their disposal. In 2014 under CEF, applications were submitted for 7.1 billion euros of co-funding for ports, and grants have been approved for a total of 907 million euros, mainly for 104 core ports and MoS projects. In addition, around 2 billion euros via the ERDF/CF has been earmarked for seaports, 1.5 billion euros for major (TEN-T) seaports and 0.5 billion euros for smaller seaports.

In addition to funding from the EU budget, the EIB has financed investments in port infrastructures and superstructures in the EU and neighbouring countries in the Mediterranean in the form of loans for around 10.1 billion euros between 2000 and 2013.

In this audit, the Court assessed the Commission’s and Member States’ EU maritime freight transport strategy and the value for money delivered by EU-funded investments in port services. The audit examined whether: - The MS and the Commission had put in place strategies for developing port services for maritime freight transport, develop robust capacity planning and identified the EU and national public funding required for infrastructures; - EU-funded port infrastructure projects had been completed within the budget and on time, and implemented effectively to improve port services for maritime freight and the transport of goods to the port's hinterland; and - the Commission had taken the necessary action as regards state aid and customs procedures to enable seaports to compete on a level playing field.

The audit work was carried out between February 2015 and April 2016 at the Commission and in five MS: Germany, Spain, Italy, Poland and Sweden.

European Court of Auditors' (ECA) observations

EU and national port strategies: absence of timely and coordinated implementation of well-planned extra port capacity was a key weakness

Investments in port infrastructure and superstructures are very costly and require long-term planning to ensure that they are profitable. Since 2013, the TEN-T Regulation has provided for EU-wide infrastructure planning by establishing a core and comprehensive network, along with technical standards and implementation deadlines. For investments in ports to be supported using EU funding during the 2014-2020 period, there is a legal obligation to make these investment part of a more general strategic port development plan (*ex ante* conditionality rules). The plan should improve the potential for increased effectiveness of future port infrastructure investments, as the strategy should include the identification of already existing port capacity and the need for additional capacity, assess current and plausible future market demand, and explore port collaboration synergies and specialisation.

All five MS visited had developed national port development strategies, but robust implementation plans and coordination were an issue. The Court found that reporting on aggregated capacity data was missing in some cases and reporting of available capacity was unreliable in some others. This shows that doubts remain on the robustness of the data provided and questions the basis on which decisions are taken for major investments in port infrastructure. The conclusion was drawn with regard to employment data, which the port authorities were generally unable to provide. In 2013, the Commission launched a research project (Portopia) under which ports data are gathered on a voluntary basis. Nevertheless, few MS and port authorities provided such data, and methodological differences in analysing job creation effects were noted.

The Commission adopted its long-term strategy on ports in 2013 by defining 329 ports as EU key ports, of which 104 were considered 'core' ports based on a set of predefined criteria. These core ports shall be connected to their hinterlands by 2030, while the remaining 225 ports have a 2050 deadline. This has given core ports de facto priority status as regards access to EU funding for the connections.

Although the global economic crisis had a temporary negative effect on the overall volumes transported between 2007 and 2009, port traffic had been growing over the past 15 years. This trend is expected to continue, according to EC and OECD forecasts, despite the differences of the market segments and of the impact worldwide.

MS do not provide data on the capacity of core ports which hinder the Commission monitoring capacities and has prevented it from putting forward an EU-wide port development plan. As nobody had a strategic overview of which ports needed funding and for what, many neighbouring ports invested simultaneously in similar structures.

Commission and OECD assessed differently the future port capacity needs which made the Court conclude that there is a risk that the EC overestimated the need for additional port capacity and consequently defined an inadequate strategy.

EU-funded port infrastructures, unused and underused infrastructures, delays and cost overruns, and unsustainable investments because of funding of similar infrastructures in neighbouring ports

The Court visited 19 ports in five MS to examine a total of 42 EU-funded projects[1] and assessed whether: - the additional port capacity created through investments had been fully used; - the projects had been completed within time and budget; - EU funding had been allocated to neighbouring ports for similar investments; and - the coordination between the Commission and the EIB functioned properly.

Investments in port infrastructure need some time to show results and, by their nature, port projects are about building capacity for the long-term future (in most cases the return on investments is low and slow).

The Court analysis of the 37 newly examined projects showed that 30 projects with 553 million euros of EU funding had been completed by mid-2015. 18 projects were being used as initially intended, representing EU funding of 359 million euros and 12 projects were either not being used or were heavily underused, representing EU funding of 194 million euros. This highlights shortcomings in the *ex ante* needs assessment, and indicates high risks of waste of the amounts invested. This observation also applies to the five reassessed ports which have been in operation for almost a decade. The remaining seven projects in the Court's sample (524 million euros of EU funding) were not yet completed at the time of the audit.

The delays in project implementation for 19 of the 30 completed projects indicate structural problems related to the issuing of permits and authorisations. Administrative burden was identified as a main cause for delays in completion of projects.

On the top of that, the Court observed that only 14 of the 30 projects examined did not have any cost overruns. The average cost overrun was around 8.7 million euros, with variations from 0.2 million euros for an inspection building to 67 million euros for transhipment infrastructure.

With regard to the reassessed projects[2], the Court key findings were that effectiveness was very low, only around 5% of the overall capacity created was being used as initially planned after almost a decade of operations. The Court considers that 292 million euros of the EU-funded investments made are still ineffective in 2015. This indicates that MS focus particularly on absorbing EU funds rather than on the effectiveness of the investments in additional port capacity.

Many missing and inadequate links - such as, absence of road and rail connections, lack of

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[1] 37 projects concerned newly examined projects and five projects were being followed up, having originally been examined in 2010 (see SR No 4/2012)

[2] Special report No 4/2012

ferry terminal and increase water depth for bigger vessels - will need further public funding to make the initial port investments work properly.

In global terms, ports are divided into 'port ranges' (Europe have the Hamburg-Le Havre range or the Mediterranean range with an East and West Med range). Ports within the same range and different port ranges compete against each other which shifts traffic between neighbouring ports and impacts on the effectiveness of the investments. Also, the fact that similar investments are made in neighbouring ports within the same range or in closer ranges indicates a lack of coordination in capacity planning at national level.

A simultaneous increase in port capacity in neighbouring ports also carries the risk of additional price competition between these ports in order to attract the required additional traffic volumes. As a result, unless the overall traffic volume increases, capacity in all ports will remain unused or underused while, at the same time, the ports' profitability will decrease.

According to the Treaty of the European Union, the task of the European Investment Bank (EIB) is to contribute, by having recourse to the capital market and utilising its own resources, to the balanced and steady development of the internal market in the interest of the Union. In addition to the 6.8 billion euros in EU funding, several of the ports examined also received a loan from the EIB, amounting to a total of 10.1 billion euros between 2000 and 2013.

Before the EIB grants a loan, the Commission and the MS concerned have to provide an opinion on whether the investments to be financed from the EIB's resources comply with the relevant EU legislation and policies. The procedure for coordination between the Commission and the EIB is governed by a Memorandum of Understanding.

The Court found that only limited information was shared between the EIB and the Commission. The information provided by the EIB limits the Commission's capacity to assess a case properly. Moreover, the Commission does not have the power to block a loan proposal if it disagrees. The absence of a proper Commission response to EIB-proposed loans to support neighbouring ports outside the EU undermined the effectiveness of EU funding invested in EU ports. For example, simultaneous funding of port infrastructure in neighbouring ports by EIB and from the EU budget led to unsustainable investments and EU ports losing significant volumes handled previously (ex. of Tanger-Med port of Morocco and ports in Spain and Portugal).

Finally, the Commission does not obtain information on the EIB's final decisions on loan applications nor a signed copy of the loan contract. Nor is any final report submitted on the relevant project's implementation or on how the loan provided has been spent, or any other relevant information on the loan payment.

EU funding at project level tied to outputs but not to results during the 2000-2006 and 2007-2013 periods.

Competition between ports can be quite intense if ports serve the same hinterland or types of goods and traffic. Granting public support to port authorities may however distort the market. The absence of state aid guidelines for seaports and differences in customs control practices between MS can make one port more attractive than others for global shipping lines.

Risks of distorting competition through state aid was identified in several cases. The Court also found a lack of clarity as regards the public funding of superstructures for ports. Despite the CEF consider the funding of superstructures for ports an ineligible expenditure, it foresaw two exceptions. The two were evoked to ensuring EU funding to 10 cases of user-specific superstructures in the ports examined.

The EU system of state aid control is based on an *ex ante* assessment by the Commission and effective cooperation between the Commission and the MS. Problems can arise where the conditions of notified aid have been substantially changed after the Commission decision, and there is no follow-up by the Commission to assess whether these changed circumstances result in a distortion of competition.

The Commission monitoring of state aid to ports is limited to aid schemes rather than individual aid notifications. In addition, stakeholders miss state aid guidelines for investments in the seaports sector, which were only included in the Commission planning for actions for 2014-2019.

The Court observed that MS' customs control practices in ports are a major aspect of a port's attractiveness. The EU's customs legislation provides for the possibility of local clearance procedures and simplifications for processing goods upon arrival and before admission for free circulation, making each customs authority to become more or less attractive to the global shipping lines.

While the Customs code provides a framework for all authorities to decide whether or not to simplify their practices, customs procedures in the EU must be uniformly implemented. The Court observed weaknesses in Commission's monitoring of MS' customs control practices.

Under the current conditions, road transport is still the dominant way to send freight from one point to another in the EU, as it has the advantages of flexibility, low cost and smooth, quick door-to-door delivery. Intra-EU maritime transport will only become competitive if it is made quicker and more reliable. One of the main problems facing maritime transport is the fact that the internal market is still not fully realised in the maritime sector. Progress to overcome this shortcoming has been particularly slow.

Conclusions

The Court reach the following conclusions:

- The long-term port development strategies put in place by the MS and the Commission did not provide a robust and coherent basis for planning the capacity needed in EU ports and for identifying the EU and national public funding required for port infrastructures;

- Funding in similar port infrastructures and superstructures in neighbouring ports has led to ineffective and unsustainable investments. Around half of the funding was invested in infrastructures which were not used or were heavily underused for more than 3 years after the works ended. This highlights shortcomings in the *ex ante* needs assessment and indicates a high risk of the amounts invested being wasted;

- The reassessment of 5 ports assessed in 2010 reached that same conclusion, with poor value for money overall: the use of the EU-funded capacity for these ports was still inadequate after almost a decade of operations. The port areas in four ports were still at a very low level or empty. Overall, 292 million euros of the investments was considered to have been spent ineffectively;

- Costs overruns and delays are further illustrations of inefficiencies in the examined investments in port infrastructures. Overall, the EU-funded projects examined had cost overruns of 139 million euros, with delays in 19 of the 30 competed projects;

- Many missing and inadequate links to hinterlands will need further public funding to make the initial port investments work properly;

- Both the internal coordination within the Commission and the procedure in place between the EIB and the Commission to assess proposed EIB loans for port infrastructures have not been functioning properly as the EIB does not share all relevant information with the Commission. Moreover, for some loan proposals, critical problems were highlighted internally within the Commission services, but not signalled to the EIB in the form of a negative opinion by the Commission; and

- The Commission did not take the necessary actions in the area of state aid and customs procedures to enable ports to compete on a level playing field. The Commission's state aid control could have been more proactive and more effective by monitoring *ex post* whether the conditions under which earlier decisions were taken, remained unchanged or by refusing support to user-specific superstructures.

ECA's recommendations

1. The Commission should:

   a) put in place a monitoring of core port capacity, taking account of the MS's plans for implementing their long-term strategies;

   Target implementation date: by the end of 2017.

   b) revise the current number of 104 'core ports' which are necessary to maintain an adequate level of accessibility for the EU as a whole;

   Target implementation date: by the end of 2023.

   c) set out an EU-wide port development plan for core ports and maritime waterways and canals;

   Target implementation date: by the end of 2020.

2. The Commission should:

   a) work with the MS to reduce administrative burden and delays in project selection and implementation by promoting the principle of a national 'one-stop-shop' for issuing, or refusal, of all permits and authorisations for port infrastructure-related investments. Moreover, a 'tacit agreement' principle should be implemented as soon as possible;

   Target implementation date: by the end of 2017.

b) strictly apply the ESIF Common Provisions Regulation and the CEF Regulation on financial corrections due to underperforming investments for the 2014-2020 period;

Target implementation date: immediately

c) assess the possibility of excluding EU funding for port infrastructure for container transhipment and storage during the 2014-2020 period. In addition, superstructures which are not within the public remit should be excluded from EU funding, as these should be considered a commercial environment;

Target implementation date: by the end of 2018.

3. The Commission and the MS should:

a) prioritise EU co-financing from both CEF and ESIF spending to core ports to improve their connections to their hinterlands;

Target implementation date: by the end of 2016.

b) fund port infrastructures other than connections to hinterlands only on the condition that there is a clearly established need, where EU added value is demonstrated and where there is a sufficiently large private investment component secured in the overall investment envelope;

Target implementation date: by the end of 2016.

4. The Commission should:

a) ensure that all necessary loan information on proposed EIB loans is shared between the EIB and the Commission to facilitate robust assessments;

Target implementation date: by the end of 2017.

b) internally clarify, and consistently implement, the procedure for determining whether critical remarks should lead to a negative opinion on a proposed EIB loan;

Target implementation date: by the end of 2016.

5. The Commission should:

a) issue state aid guidelines for seaports;

Target implementation date: by the end of 2017.

b) ensure consistency in the treatment of user-specific port superstructures;

Target implementation date: by the end of 2017.

c) increase the number of desk-based state aid investigations on ports and its follow-up of earlier state aid decisions to ensure that the conditions present at the outset remain;

Target implementation date: by the end of 2017.

6. MS should systematically notify the Commission of all public financial support to ports in accordance with EU state aid rules;

   Target implementation date: by the end of 2017.

7. The Commission should:

   a) ask MS to periodically provide specific information on the type and number of specific customs procedures at individual core ports in order to assess whether ports are being treated equally;

   Target implementation date: by the end of 2017.

   b) improve the competitive position of maritime transport compared to other transport modes by further simplifying maritime transport and customs formalities, in particular by moving towards an EU maritime 'single window';

   Target implementation date: by the end of 2017.

European Commission's replies

The Commission considers that port infrastructure is planned and designed with a long-term lookout (10 to 20 years) after its completion. Investments in ports can therefore not be assessed with a relatively short-term perspective.

The Commission considers that after 3 years of the conclusion of the works, it is premature to conclude that investments in underused ports are ineffective and a waste of money. The financial crisis in 2008/2009 has led to a decrease in demand, which has resulted in underused capacity in almost all transport sectors, not only in sea transport. This would have affected the needs assessment.

The Commission notes that the used capacity for most of the ports examined by the Court has been increasing. The Commission underlines that the Court's findings should be interpreted in the context of an adequately long-term perspective for ports investments.

With regard to the ECA recommendations, the Commission accepts the three indents of the first recommendation and two of the three indents of the second recommendation. The recommendation on port infrastructure for container transhipment and storage is only partially accepted and the Commission will reassess the need for further support in these two areas. On recommendation three, the Commission accepts partially the second indent because it is not always achievable to secure private investment components to ports located in peripheral regions and specific cases of maritime accesses to ports. With regard to recommendation four, the Commission accepts the first indent but not the second one. The inter-service consultation procedure already foresees effective consequences for a Commission's negative remark to a proposed EIB loan. The first indent of recommendation five is not accepted by the Commission either. The Commission already provides guidance on the application of state aid rules in the port sector. The second and third indent of the fifth recommendation are accepted. Finally, the Commission does not accept the first indent of recommendation seven (recommendation six is addressed to the MS), as it would increase the administrative burden for the EU MS administrations without clearly leading proportionate benefits. It accepts the last indent of recommendation seven.

Recommendations by the rapporteur:

The European Parliament:

1. Welcomes the Court's report and endorses its recommendations;

2. Welcomes the fact that the maritime transport has been growing in the EU in the last decade despite the considerable differences of utilisation between MS ports;

3. Underlines that MS ports’ investment policy is established in accordance with political decisions taken at national level which can diverge from the EU strategy, also defined by those same MS; is of the opinion that it is the Commission’s primary role to ensure the coherence of those decisions;

4. Acknowledges that port infrastructure investments are long-term investments; regrets that in most cases the return on investment is however low and slow;

5. Regrets that national port development strategies were mostly developed but that robust implementation plans as well as coordination remain an issue;

6. Is strongly concerned that the Court found a lack of reporting on aggregated capacity data as well as unreliable reporting on available capacity;

7. Regrets that MS do not provide data on the capacity of core ports, which hinders the Commission’s capacity monitoring; stresses the importance of an improvement of the situation so the Commission can put forward an EU-wide port development plan;

8. Considers that the coordination between EIB and Commission services’ can be improved with better cooperation and more transparent procedures.