

EU Consultation on Ports Policy

A Statement of HPA concerning the Workshop

Port Financing on 18-19 January 2007 in Hamburg



Ingo Fehrs
Corporate and Port Strategy
Hamburg Port Authority

Antwerp,
28 February 2007

Calendar consultation workshops

- 14.-15.11.06 **Antwerp** Port services (fair competition, concessions, position of port authorities)
- 18.-19.01.07 **Hamburg: Port financing (State Aid, Transparency of accounts, financial autonomy of ports, tariffication)**
- 14.-15.02.07 **Lisbon** Sustainable development of port capacity and environmental issues, general transport policy issues, inter-port cooperation)
- 8.-9.03.07 **Valencia** Port-internal operational bottlenecks (cargo-handling and capacity, technical-nautical services, labour issues)
- 19.-20.04.07 **Naples** Port-external operational bottlenecks (hinterland connections, customs, logistics)
- 9.-10.05.07 **Tallinn/Helsinki** Competition from non-EU ports, proactive behaviour of port sector and positive image of seaports

Non-Paper

- Emphasis: does not represent any official position of the Commission
- Subjects covered and questions placed have the only objective to structure and focus the debate

Non-Paper

- Several scenarios at the end of the consultation process

- 3. „do nothing“ option: no initiative and leave market forces regulate themselves within the limits of the EU Treaty
- 4. „soft law“ option: elaboration of documents interpreting the Treaty or existing legislation in respect of their application to ports
- 5. „legislative“ option: elaborate a ports specific catalogue of legislative measures
- 6. Combinations of options 1, 2 and 3

Non-Paper Summary of questions: State aid

- Ist the suggested classification of the different items composing port infrastructure correct and complete?

- 3. Basic Infrastructure
 - Breakwaters, Access to sea: construction and dredging of fairways, etc.
- 4. Infrastructure
 - Locks, Basins, Quay walls, docks, Quays and jetties
- 5. Superstructure
 - Building and paving of terminals
 - Warehouses and other storage facilities
 - Construction of other fixed facilities in terminals
 - Rails and roads in port areas
 - Cranes, Quay equipments
- 6. Navigational aids
 - Lighthouses, Buoys, Lights

Non-Paper Summary of questions: State aid

- What is the impact
 - on competition of public funding of „basis infrastructure“, of „infrastructure“ and of „superstructure“?
 - on competition between ports? Within a same port?
 - of public support to the extension of existing facilities?
 - in the case of an extension of a facility already operated by a company?
 - on competition of the absence of any recovery of investment cost by „land lord“ or equivalent entities?
- Are there reliable means other than a tender procedure for setting the market price for the use of infrastructure?

Non-Paper Summary of questions: Port tariffs

- Are port tariffs and services always easily available for the public?
- Are transparent and objective criteria for rebates or equivalent advantages always applied to ports customers (in particular shipowners)?
- Is gross tonnage still a good criterion for calculating port dues?
- Is this criterion detrimental to short sea shipping?

Non-Paper Summary of questions: Financial autonomy

- Is there any role for the Community to promote financial autonomy of ports?
- Should the scope of directive 80/723 be modified in order to cover port managing entities irrespective of their legal status?

Statement of HPA, Introduction

- **„port financing“ as a key subject of a coherent port policy framework**
 - must consider the overall objective to strengthen the competitiveness of EU ports
 - must respect the different systems and organisational forms in the Community ports

2. State aid

- **Fundamental point:**
 - EC-Treaty rules on State aid allow public funding to some extent
- **Main objective of State aid guidelines:**
 - common application of existing State aid rules to create a fair level playing field
 - legal clarity and legal certainty for the port sector to stimulate investments

2. State aid

- **Central field of considerations:**
 - Financing of the creation and maintenance of port infrastructure and superstructure
 - Need for a precise dividing line between different parts of infra- and superstructure and different activities of the managing body of a port

2. State aid

- Some general documents inform about previous and expected practice of the Commission:
Commission's Green Paper of 1997, Commission's Communication of 2001, Vademecum of 2002 and some individual decisions (Flemish Ports, Reebok)
- But there remain legal uncertainties, "grey areas" and controversial statements of the Commission

2. State aid

- **Categories of infrastructure needs:**
 - precise definitions
 - combined with a list of examples
 - and derived principles
- legal criteria of Art. 87 (1) EC-Treaty essential
 - **key criterion: selectivity**

2. State aid

- Some examples for legal uncertainties („grey areas“) in the port sector:
 - quay walls
 - creation of new land and water areas
 - land lease / quay wall rents in the port
 - Market economy investor principle

2. State aid

- Clear rules and definitions for future funding schemes
- with a reasonable transitional period

3. Tarification

- **Port tarification needs**
 - a transparent system, based on clear rules and publicly available,
 - but there is no objective reason for introducing a community framework

- **Transparency but not harmonisation**

4. Transparency

- Transparency and separation of accounts in the field of public financing in ports
- Extend Transparency Directive to all seaports to
 - indicate direct and indirect forms of financial assistance
 - keep separate accounts

5. Conclusion

- **A future EU port policy should include / respect the following aspects:**
 - Clear rules on port financing for the future to achieve legal clarity and legal certainty and create a level playing field
 - Port tarification needs transparency but not harmonisation
 - Strict and comprehensive application of the Transparency Directive to all ports

Thank you
for your attention!

