



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.10.2007  
SEC(2007) 1339

**COMMISSION STAFF WORKING DOCUMENT**

**Accompanying document to**

**Communication on a European Ports Policy**

**Full Impact Assessment**

{COM(2007) 616 final}  
{SEC(2007) 1340}

**Lead DG:** TREN

**Other involved services:** SG, SJ, ENV, ENTR, MARKT, COMP, SANCO, TAXUD, FISH, TRADE

**Agenda planning or WP reference:** 2007/TREN/004

### **Executive summary**

Following the withdrawal of the proposal for a Directive on Market Access to Port Services COM (2004) 654, the Commission launched a wide-ranging stakeholder consultation and organised six workshops.

The challenges facing European ports are many and varied. Maritime traffic growth induces demand for port facilities. Container shipping is the fastest growing maritime sector. These factors create congestion in European ports. Expansion of container terminals has not kept pace with capacity needs. Diverse approaches to port financing in Member States call for a level-playing-field for competition. Technological development has changed port activities: cargo-handling is less labour-intensive and more capital-intensive. Labour issues include: improvement of health and safety conditions, provision of high level of training, more flexible employment patterns and social dialogue. Environmental legislation ensures the sustainability of ports. Progress has been made in environmental management in ports. Many ports are actively implementing environmental Directives. Environmental constraints on port projects have led to lengthy procedures.

Key objectives of the actions proposed for the EU Ports Policy are: to ensure that there is sufficient port capacity available to handle the growth in EU trade; to promote greater freedom of access for new port service providers; to promote more flexible employment patterns and social dialogue; to promote fair competition within and between ports; to raise environmental management standards in ports and to achieve a better balance between environmental protection and economic growth objectives.

Experiences with past proposals and the views expressed by stakeholders during the consultation suggest opposition to legislation on concessions. Many of its benefits can be achieved through soft law. A Directive on work in ports is unlikely to meet the approval of stakeholders. Social dialogue among stakeholders allows a better balance between social partners. Experience with past proposals suggests that approval for any legislation on technical nautical services will be difficult. The "soft law option" could obtain similar benefits. Compliance with environmental legislation may represent a significant part of the port budget. A soft law solution is the best choice to achieve progress in terms of environmental standards and to offer guidance to port authorities on the interpretation of environmental legislation. Transparency in public financial flows and in the pricing system in the Community port sector is essential to ensure a level playing field within and between ports. Transparency is considered a key element for the application of State Aid provisions. Transparency in the accounting system means transparency of port charges.

A "one-size-fits-all" approach to address all these issues is not possible. Links between many of the issues suggest a package of measures. The Commission has a role to identify and promote these measures. The Communication on a European Ports Policy outlines the actions the Commission will take regarding the different port-related policy fields.

## **SECTION 1: PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES**

### **1.1. Organisation and timing**

The Communication on a European Ports Policy is part of the Commission Legislative and Work Programme 2007 adopted on 24 October 2007, SEC (2006) 629 final, and is a priority initiative in the work programme of DG TREN identified under number 2007/TREN/004.

The Commission is committed to ensuring the quality of its proposals. Impact assessment is carried out on initiatives with the potential for significant economic, social and environmental impacts. Therefore, all items identified as priority initiatives are subject to impact assessment.

In the context of the Framework Contract for Impact Assessments and Evaluations signed in February 2006 between PricewaterhouseCoopers Advisory (PwC) and the Directorate-General for Energy and Transport (reference TREN/A1/46-2005), DG TREN has requested PwC to carry out an impact assessment study on the Communication on a European Ports policy. A draft final report of the impact assessment study is scheduled for 31 July 2007. The present impact assessment is based on that study.

An inter-service steering group has been established. The following DGs have been invited to participate: SG, SJ, COMP, ENTR, ENV, FISH, MARKT, SANCO, TAXUD, TRADE. A first meeting took place on 19 June 2007 explaining the objective of the Communication on a European Ports policy and the consultation process. A second meeting took place on 13 July 2007 to report on progress on the impact assessment.

The different issues for a European ports policy, and which lead to the Communication on a European Ports policy, have been subject of wide public consultation to ensure that all interested parties are involved in the decision-making process.

### **1.2. Consultation and expertise**

Following the withdrawal of the proposal for a Directive on market access to port services COM (2004) 654, of 13 November 2004, on 8 March 2006, Vice-President and Commissioner for Transport Jacques Barrot decided to launch a wide consultation of stakeholders in order to better understand the port sector and to better assess how the principles of the Treaty can effectively be applied to it. The consultation process was launched on the occasion of the Annual Conference of the European Sea Ports Organisation – ESPO held in Stockholm, Sweden, on 1 and 2 June 2006. In order to achieve this objective, DG TREN organised six workshops with stakeholders on the main port-related topics.

The workshops were conceived with the idea of having an open and concrete discussion with stakeholders. For this reason the number of participants was fairly limited (between 60 and 120 people in each workshop depending on the subject matter). The representatives of the different categories of stakeholders attending the workshops were selected by the relevant European associations who were given a variable number of seats for each workshop depending on the subject matter and the interest of a particular federation in that subject (cfr. Annex I).

Ahead of each workshop DG TREN elaborated a 5-10 page discussion document distributed among participants and intended as a trigger for discussion. No official minutes were laid

down. Apart from the statements expressed during the workshops, written contributions to the consultation process have been received from a number of stakeholder associations.

The table of workshops is attached in Annex II. A few weeks after each workshop, Member States' port experts met in Brussels in order to be debriefed by the Commission's services and to discuss the subjects at stake.

An overview of the contributions of stakeholders expressed in the consultation workshops is publicly available in the form of a table as Annex III

The consultation process was officially closed by Vice-President and Commissioner for Transport Jacques Barrot on the occasion of the Annual Conference of the European Sea Ports Organisation – ESPO held in Algeciras, Spain, on 31 May and 1 June 2007.

### **1.3. Preliminary findings from the consultation**

The preliminary findings are the following:

- Organisational structure of ports: there is a vast mosaic of port management models across Europe. Under EC public procurement rules there are several factors that have an impact on whether an entity is regarded as a public service entity acting in the general public interest or as a commercial entity governed by the rules of the market place. There is no role for the Commission to play by establishing a unique port management model.
- Port financing: the wide variety of approaches to port financing in Member States, deriving from the variety of port management models, and differences in accounting procedures demonstrate the need to create a level-playing-field for cross-border competition. Guidelines on State Aid to ports and more transparency of port accounts are needed.
- Capacity shortages: these arise due to rapid and unpredictable growth of cargo volumes, increase of ship size, concentration of the shipping industry, difficulty to upgrade existing terminals, sub-optimal location of port capacity, environmental constraints, and inability of new port service providers to access the market. Concerning access to port land and port services, fixing a level-playing field among port authorities is necessary.
- External impacts: port operations can have a significant impact on the environment by causing water, air and ground pollution. Port construction projects must comply with national and European environmental legislation. There is a need for enhancing environmental management in ports, but there is also a general feeling in the port sector that a rebalancing of the relationship between economic growth and environmental protection through interpretative guidance by the Commission on environmental legislation is necessary.
- Social issues: technological development, e.g. containerisation and automatisisation, has resulted in changes in port labour requirements. Higher level of skills and more flexible employment patterns are required, in particular, improvement of health and safety conditions, high levels of training, freedom to select port workers and negotiate conditions of employment.

- Public image of ports: ports are not fully appreciated by the neighbouring communities. There is an awareness of the "hard" (monetary) benefits they produce; their "soft" (cultural, historical, tourism-related) benefits are just starting to be recognised.

These preliminary findings have been taken into account for the drafting of the policy options to be assessed by PwC for the impact assessment study, for the present impact assessment, as well as for the drafting of the Communication on a European Ports policy.

#### **1.4. Impact Assessment Board**

On 13 August 2007, the Impact Assessment Board received a preliminary draft of this Impact Assessment Report. The Board met on 5 September to review the draft and adopted its Opinion on 7 September. The main recommendations are:

1. As a general recommendation, more clarity and a partial reorganisation was asked for regarding the presentation of the options and their impacts. More clarity was asked for regarding subsidiarity, spatial planning, granting of terminal concessions, port labour and the image of ports.
2. The way the impact assessment report sets out the need for Community level action needs to be substantially strengthened.
3. The effects of the presented policy options on workers in ports should be better analysed and presented.
4. The presentation of the options and their impacts should be clarified.
5. The relation between the proposal and other current or future EU and national policy initiatives should be better explained.

This revised Impact Assessment Report takes account of the Impact Assessment Board's opinion throughout, in particular on the following points:

1. A regrouping of policy options, their impacts, their comparison and a conclusion ordered by policy areas with the aim of providing more clarity to the reader.
2. A new paragraph underlining the EU added-value and strengthening the subsidiarity issue.
3. The different views of consulted stakeholders have been described more in detail through the addition of a table summarizing the positions of the stakeholders.
4. A table summarizing objectives and impacts analysed by options.
5. More clarity on the intentions regarding environmental issues.
6. More clarity on spatial planning, notably a qualitative analysis of the infrastructure necessary for the materialization of the proposed alternative scenario.
7. References to port work related training and health and safety issues.

## SECTION 2: PROBLEM DEFINITION

### 2.1. Introduction

The fall of international barriers to trade and technological progress have enlarged perspectives and driven the globalization process. Reductions in the cost of transport and the development of communication systems have created a complex and highly competitive economy. China and other emerging economies have started a process of accelerated trade-based catching up development thanks to a cheap and relatively well-trained and equipped workforce. At the same time, and to face these challenges, companies have established in the Far East, moving their operations to new emerging markets. This has added to the booming growth of countries such as China.

Taking a look at the volumes handled by worldwide maritime transportation it is evident that they reflect this economic trend: in 2005 worldwide transportation increased by 3.8% to a total volume of 7.11 billion tons, of which 4.69 billion tons of dry cargo and 2.42 billion tons of liquid cargo. The EU is the leading merchandise trading bloc and number one world exporter. Between 1999 and 2004 trade in goods by sea between the EU-25 and the world has increased by 25% in terms of volume (4% p.a. average) and 50% in terms of value (9% p.a. average). Gross weight of seaborne goods handled in all EU-27 ports in 2005 has been 3.717 billion tonnes, an increase of 19% since 1997. Traffic growth in tons, a trend which is there to stay,<sup>1</sup> has been accompanied by an increase in average transport distance. Longer distances between cargo origin and destination reflect the tendency of companies to relocate their industries to the Far East, the fact that industrial growth occurs in regions which are distant from the regions of supply of natural resources, and the growth in international trade in all commodities between traditional and new economies.

### 2.2. The demand side: dynamic growth

These volume increases induce demand for port facilities. The cargo market can be divided into several different markets: container, Ro-Ro, conventional general cargo (break-bulk), dry bulk, liquid bulk.

Container shipping has been the fastest growing sector of the maritime industry during the last two decades with an average growth rate of 11.5% in the last five years. This trend has its roots in the above mentioned economic developments: increasing economic activity, trade liberalisation, reduced import tariffs, globalisation, outsourcing, increasing containerisation of dry bulk and break-bulk cargoes. The number of containers shipped worldwide has nearly doubled in the past six years from 60.5 million twenty-foot equivalent units (TEU) in 2000 to 112 million TEU in 2006. In Europe the largest part of container traffic is concentrated in North Western Europe (the "Hamburg-Le Havre range") whose ports registered in 2005 a throughput of 41.7 million TEU, representing a share of 56% of the total European container traffic. In particular, the three largest European ports Rotterdam, Hamburg and Antwerp handled 23.86 million TEU.

The Ro-Ro market encompasses the following sub-markets:

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<sup>1</sup> The Mid-term review of the 2001 Transport White Paper – "Keep Europe moving – Sustainable mobility for our continent", COM(2006) 314, estimates the increase in maritime traffic between 2000 and 2020 to be in the order of 59% for the EU-25 (based on the result of the ASSESS study).

the deep sea segment, divided into car carrying trades, a market which is characterized by growing demand; and ConRo, which means a combination of container and Ro-Ro cargo on one single ship, this market has nowadays nearly disappeared;

and the short sea segment, divided into ferry transport for passengers with cars and rolling freight on lorries, a market characterised by a progressive shift from passenger traffic to freight traffic; and freight only unaccompanied Ro-Ro, a well-established market in the North Sea, but less so in the Mediterranean.

Conventional general cargo (break-bulk) is generally used to transport a variety of goods packed in different ways (e.g. heavy machinery, power generators, industrial equipment, timber, steel, bags, drums, etc.). Although break-bulk cargo is continuing to increase, in present years break-bulk cargo has been surpassed by container cargo, as the latter presents advantages in terms of ease of loading / unloading and transfer of the goods.

Worldwide dry bulk cargo represented a total volume of 4.69 billion tonnes in 2005 and is continuing to grow. The five major dry bulk cargoes are iron ore, coal, grains, bauxite/alumina and rock phosphate.

Worldwide seaborne liquid bulk cargo amounted to 2.42 billion tonnes in 2005, of which 1.86 billion tonnes was crude oil and 0.57 billion tonnes oil products.

The total throughput of cargo in European ports in 2005 was 77.23 million TEU of containers, 156.45 million vehicles in short sea shipping ferries, 1.395 billion ferry passengers, 1.58 billion tonnes of liquid bulk cargo, 977 million tonnes of dry bulk cargo, and 1.5 million tonnes of conventional general cargo (break-bulk).

In line with the above increase in container traffic, container vessel size is also increasing. The high level of competition and the necessity to save costs through economies of scale pushed shipping lines to invest in containerships with a capacity in excess of 5000 TEU. The main growth is concentrated in the larger size range, between 5000 and 7500 TEU and in excess of 7500 TEU. In the last ten years capacity has increased twelve-fold, with an annual growth of approximately 30% and a tendency towards big size vessels: in 2000 10% of the total fleet was represented by vessels with a capacity in excess of 5000 TEU, by 2010 the share of this vessel size is expected to represent 40% of the total fleet. On the Far East – Europe route the average vessel size in 2000 was 4500 – 5500 TEU; in 2010 it is expected to be 8000 – 9000 TEU, with a further increase by 70% by 2015. The largest operational container vessels have a capacity in excess of 12000 TEU. A similar trend is visible in the Ro-Ro sub-markets of car carrying, ferry market and unaccompanied freight.

### **2.3. The supply side: practices can be improved**

As outlined above, cargo transport is characterized by a progressive growth in vessel size. This, together with the large expansion in cargo volumes, has created serious problems of congestion in many European ports. Frequent delays impact on the entire supply chain. Reliability has become a key factor in the choice of a port, as well as its geographic position and cost. The expansion of container terminals has not kept pace with capacity needs.

In recent years many European port authorities have undergone an organisational restructuring, which features decentralisation of authority from the State to independent local entities, increased financial autonomy and the wider use of commercial management

principles, as well as the separation of responsibility for the provision of infrastructure from the supply of port services, and increased private sector involvement in the provision of port services. An overview of the different organisational structures is given in Annex III.

The wide variety of approaches to port financing in Member States, deriving from the variety of port management models, and differences in accounting procedures demonstrate the need to create a level-playing-field for cross-border competition. The main problems concerning port financing are differing levels of financial autonomy, variations in the provision of public financing, and lack of transparency in tariff setting.

Differing levels of financial autonomy are explained through the fact that some ports are wholly independent and self-financing, while some ports are entities under the control of the State, regions or municipalities, operating independently but with varying financial autonomy and support, and other ports operate as departments of their parent organisations without separate accounts and a political rather than commercial basis for decision-making.

Member States have historically adopted different approaches to the provision of public financing to ports, depending on whether they regard port installations as public service infrastructure similar to roads or commercial investments similar to those made in the manufacturing industry. Some States make contributions to port investments free of charge, others provide loan financing. The items qualifying for financial support, and the level of support granted, vary substantially among Member States. In addition, smaller ports in peripheral areas may receive State funding to operating costs as well as capital costs if port operations are considered as public service obligations. As a result, there are considerable differences between ports in the proportions of costs which have to be recovered from port user via tariffs, rents, concession fees and other payments.

There are three main complaints of users in respect to port tariffs. Firstly, in some ports the responsibility for charging for port infrastructure and services is fragmented between several organisations not all of which publish their charges; comparability of charges between ports is further complicated by the use of different charging units (Gross Tonnage, length, cargo tonnage, number and duration of operations, labour and equipment requirements, etc.); as a result, it is difficult to ascertain in advance what the total cost will be. Secondly, ports do not make it clear how they set their tariff in terms of the total costs to be recovered from users, the allocation of these costs to different categories of users and the methodologies employed for converting these costs into charges; some port users suspect cross-subsidies in favour of the more powerful and mobile customers at the expense of captive local businesses. Thirdly, shipping lines pass on to customers their own port costs via terminal handling charges without providing any evidence of what they actually pay.

Unfair competition from non-EU ports, mainly hubs serving the same EU hinterlands, results from lower environmental and health and safety standards, less stringent enforcement of regulations, and the use of low cost labour. These advantages significantly reduce the costs of non-EU ports, enabling them to charge lower tariffs.

A process of consolidation has taken place in the container terminal industry in the recent past. In 2001 the top-ten terminal operators handled 42% of total container throughput, in 2005 their share increased to 55%. Some important mergers and acquisition of stakes contributed to this consolidation. Today the top-four terminal operators have a market share of 39%, compared to 29% in 2001.



Technological development through increasing containerization has brought significant changes in port activities: cargo-handling, which was once a labour intensive activity, has become more capital-intensive. This has resulted in a reduction in the work force required to move a given volume of cargo. Moreover, in order to improve efficiency, berthing times of vessels in ports are shorter, the use of up-to-date cargo-handling equipment has been introduced and new working schemes have been adopted. This evolution has brought about reduction in port employment. There are three issues to be resolved: improvement of health and safety conditions in ports, provision of high level of training, and granting port employers more freedom to select their workforce.

Labour accidents in ports are unacceptably high and action is needed to reduce them. A safety culture must become part of port work and the enforcement of health and safety rules, as well as proper investigation of all accidents is needed.

It is in the ports' own interest to ensure that all workers are properly trained for their jobs, in view of the technical complexity of the equipment they operate. However, there is considerable variation in the levels of training provided by different enterprises and there are no common European-wide standards.

Many ports operate labour pools to protect workers against market instability and fluctuations in demand, whilst ensuring that employers always have access to sufficient labour to meet peak workload requirements. Labour pools and strong trade unions have been instrumental in ensuring that port workers receive reasonably good wage rates (relative to the industrial average in each country). However, they are seen by some stakeholders as a source of restrictive practices undermining port efficiency and productivity. Some employers argue that mandatory use of labour pools might be incompatible with the EC Treaty. If European ports are to operate efficiently, an appropriate balance needs to be found between employers' freedom to select and negotiate with their own workforce, and the protection of workers' rights. This is likely to involve either redefining the role of labour pools, or seeking a gradual reduction in their importance and powers. The issue of port work is extremely sensitive and there is general consensus among stakeholders that it can only be addressed through a social dialogue between the various partners involved. Failing to address the labour issues might be failure to get the best possible performance out of Europe's ports. Overmanning is likely to be absorbed by traffic growth, but low training and safety levels will depress productivity and lead to avoidable accidents. Failure to introduce more flexible working practices might lead to higher unit costs.

European ports are increasingly competing not as individual places that handle ships, but as crucial links within the supply chain. Competition has two aspects: intra-port competition and inter-port competition.

Intra-port competition is regarded as beneficial for the competitiveness of ports, for local and national economies and for customers and industries, because it limits the market power of port service providers and it leads to specialisation, flexible adaptation and innovation. Intra-port competition creates the conditions for organisational structures based on economies of scale. Intra-port competition issues relate to technical-nautical services (pilotage, towage and mooring), all cargo handling operations and passenger services.

As for inter-port competition, the networks of shipping lines and increasing vessel sizes bring about competition among ports, sometimes located far away, but which are in the same market segment. Port infrastructure development is an important factor not only to avoid

saturation, but also for the handling of larger, longer, higher and deeper vessels in view of larger economies of scale. Therefore, terminal area and capacity, quay length, maximum draft and efficient intermodal hinterland links are key elements for shipping lines' decisions for the choice of a port of call. In particular, further to increasing containerization, port infrastructure has significantly changed requiring integrated systems, sophisticated shore side terminals, intermodal connections by rail, road and inland waterways, and automated information systems to track shipments during their voyage. Hub and spoke configurations have developed among ports where feeder lines add to SSS traffic and to port congestion. The aspect of competition is particularly important in the case of container transshipment, because shipping lines can easily move their operations from one port to another, especially in areas with many ports at a short distance from one another.

Adequate links between the various transport networks is an important measure to facilitate the development of freight transport logistics in Europe. In order to promote intermodality it is crucial to focus on the development of efficient transport corridors where both the development of rail, road and port facilities is planned into an integrated manner. Intermodal terminals are an important interface to develop intermodal transport across the European transport network. The quality of services at terminals and the efficiency of terminal operations have a considerable influence on the quality and costs of the whole transport chain. Transport users are confronted with traffic congestion in the major container ports and road connections. There is a need to increase capacity of port infrastructure in order to absorb increasing volumes of traffic.

The mid-term review of the 2001 Transport White Paper – "Keep Europe moving – Sustainable mobility for our continent" COM(2006) 314<sup>2</sup> addresses the issue of connecting the different transport modes indicating that increased investment within ports and towards the hinterland is necessary in order to improve and extend services so that ports become poles for growth instead of potential transshipment bottlenecks. The mid-term review supports the implementation of the priority projects within the trans-European transport networks (TEN-T), most of which are railway projects. Hinterland connections by railway to and from ports are receiving and will receive even more special attention for improving connections between the maritime façade and the hinterland. In this context, the promotion of a rail freight oriented network and the proposed logistics action plan will play an important role, strictly connected to the ports policy.<sup>3</sup> Hinterland connections by inland waterways are equally receiving more special attention. There is a high potential for the development of efficient and high volume connections to and from ports, as outlined in the Communication on the Promotion of Inland Waterway Transport "Naiades", COM(2006) 6. Moreover, the ports policy is complementary to the EU Maritime Policy as announced in the Green Paper "Towards a future Maritime Policy for the Union: A European vision for the oceans and seas", COM(2006) 275 with its integrated and holistic vision.<sup>4</sup>

Shortages of port capacity have adverse effects throughout the economy. Firstly, they lead to less efficient port operations, slower cargo handling rates and higher unit costs due to port congestion, which are translated in higher port charges. This effect is likely to be even more pronounced if the access to the supply of infrastructure remains limited to the existing

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<sup>2</sup> [http://ec.europa.eu/transport/transport\\_policy\\_review/index\\_en.htm](http://ec.europa.eu/transport/transport_policy_review/index_en.htm)

<sup>3</sup> A Communication on a Rail Freight Oriented Network and an action plan on Logistics are scheduled for adoption on 17 October 2007.

<sup>4</sup> A Communication on an EU Maritime Policy is scheduled for adoption on 10 October 2007.

providers of port services and new market entrants are excluded. Secondly, shipping schedules become less predictable, resulting in the imposition of port congestion surcharges by the shipping lines, and the need to increase transit times or use more vessels on the route in order to offset the additional time spent waiting for a berth. Thirdly, uncertainty about cargo delivery times undermines just-in-time manufacturing processes, and increases costs throughout the supply chain. Finally, considering present and forecast growth rates in maritime transport, creation of overcapacity is not an issue.

Fulfilment of European and national environmental legislation is a fundamental aspect in ensuring the sustainability of port development. Considerable progress has been made in environmental management systems in ports. Many ports are actively implementing key Directives related to habitat protection, waste disposal, hazardous cargo, water quality, air quality, noise, environmental impact assessment and monitoring. Environmental constraints on new port developments have, on occasions, restricted the supply of land for new port construction, led to lengthy and complex planning procedures, and significantly increased the costs of new capacity through requirements for mitigation measures.

The value of ports is often not fully appreciated by the communities within which they are embedded. Although there is awareness of "hard" (monetary) benefits in terms of local added value, job creation, attraction of industry, links to other activities, their "soft" benefits as international gateways for the exchange of ideas and cultures, archives of local history, centres of naval power, visual landmarks, recreational centres and sources of civic pride, are only just beginning to be recognised. However, these positive impacts are usually offset in the public perception by unease about their environmental impacts (noise, pollution, traffic congestion, visual intrusion), divisiveness (physical and social), and the ability to disrupt everyday life (strikes and demonstrations, organised crime, shipping accidents, emergencies). As a consequence, ports do not always get from their local communities the support which they deserve. This adds to the difficulty to acquire land for the expansion of port activities, and to integrate their development plans with those of the surrounding urban area. This negative public image encourages local politicians to press for the relocation of port activities outside the city.

The challenges facing European ports are many and varied. Past experience has indicated that it is no longer possible to use a "one-size-fits-all" approach to resolving them. Since the last proposal for a Port Services Directive there has been a shift away from reliance on competition and market forces as the main source of improvements, in favour of a more co-operative approach to problem solving. This means that the policy options in Section 4 are more numerous than those considered previously, and at the same time more flexible so that they can be adapted to fit local circumstances. Their implementation may proceed at different speeds in different countries, and more stakeholders are likely to be involved in working out the details.

Nevertheless, the close links between many of the issues outlined above suggest that it should be possible to put together a consistent and coherent package of measures to rectify the shortcomings undermining the performance of European ports in a way which carefully balances the interests of the different stakeholders. The Commission has a role to play in identifying and promoting these measures.

## 2.4. EU's right to act

To develop an Impact Assessment of the EU Communication Ports policy it is important to assess whether it is proper to intervene at the EU level and if regulatory intervention is needed in the field of ports policy.

The EU's right to act in the ports policy field has been examined from two points of view:

Legal basis for the EU's right to act: documents and acts providing the founding principles of a EU "Common Transport Policy" are examined to establish the legal basis for the EU's right to act in the Ports Policy field;

Fundamental principles of EU action: principles of subsidiarity, proportionality and conferral govern the limits and use of the Union competences. The respect of such principles has been verified to give further strength to the EU's right to act in the Ports Policy field.

### 2.4.1. Legal basis

Art. 211 of the EC Treaty empowers the Commission, as the Guardian of the Treaty, to ensure that its provisions and the measures taken by the institutions pursuant thereto are applied, and to formulate recommendations or deliver opinions on matters dealt with in the Treaty if the Commission considers it necessary.

Concerning ports policy, the Commission bases its right to act on the following Titles of the EC Treaty:

Title III of the EC Treaty, arts. 39 *et seqq.*, which provides for free movement of persons, services and capital. In this context, art. 43 provides for the right of establishment and art. 49 provides for freedom to provide services.

Title V of the EC Treaty, arts 70 *et seqq.*, which provides for a common transport policy. On the basis of the provisions contained in this Title, a large set of measures have been adopted in the field of transport, including maritime transport. Equally on the basis of this Title several documents setting out the main objectives of the common transport policy have been issued. Those objectives are linked with more general objectives of EU policy.

Title VI of the EC Treaty, arts. 81 *et seqq.*, which provides, *inter alia*, for common rules on competition. In this context should be recalled that under Article 86(2) of the Treaty, undertakings entrusted with tasks of general economic interest are subject to the Treaty rules on competition and on internal market as long as the application of such rules does not prevent them from effectively fulfilling their tasks. In this context, according to the principle of proportionality, the means used to accomplish the general interest mission have to respect the freedoms of the internal market without exceeding what is necessary to guarantee the fulfilment of the mission<sup>5</sup>.

In accordance with the principle of subsidiarity, art. 5 EC Treaty, the following policy areas have been left to Member States, social partners and stakeholders:

- Spatial planning;

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<sup>5</sup> Communication from the Commission — Services of general interest in Europe, Official Journal C 017, 19/01/2001, p. 4., point 23.

- Social dialogue;
- Image of ports.

Analyses have verified the compliance of an EU ports policy to the main objectives that the Commission considers to be important at the EU level: competitiveness, growth and jobs, economic and social cohesion and a healthy environment. Against this background, in COM(2005) 12 “The Commission’s Strategic Objectives 2005-2009”, the Commission states that “competitiveness, growth and jobs, as well as economic and social cohesion and a healthy environment (...) are essential components (...) on which we must deliver”.

Some of the key objectives of the actions proposed for an EU ports policy are:

1. To ensure that there is always sufficient port capacity available to handle the growth in EU trade, and that this capacity is provided at the most suitable locations taking into account trade-offs between logistics requirements, construction costs and protection of the environment.
2. To promote greater freedom of access for new port service providers where this is consistent with safety and security requirements,
3. To promote more flexible employment patterns and social dialogue.
4. To promote fair competition within and between ports, whilst taking into account the wider external costs associated with port operations at different locations.
5. To raise environmental management standards in ports.
6. To achieve a better balance between environmental protection requirements and the economic growth objectives set out in the Lisbon Agenda.
7. To increase the use of more sustainable modes of transport for the movement of goods to and from ports, and within the European Community

Such objectives are also key messages of the second proposal for a Directive on Market Access to Port Services COM(2004) 654, in which the identified areas of action are:

- Intra port competition (between service providers in the same ports)
- Inter port competition (between ports)
- Safety, security, environmental
- Framework for access to the provision of port service (duration of authorization, limitation of number of service provider)
- Mandatory authorization
- Financial transparency Directive

The 2001 White Paper on Transport had proposed measures to develop a transport system capable of: shifting the balance between modes of transport, revitalising railways, promoting transport by sea and inland waterway and controlling the growth of air transport.

In this way, the White Paper fits in with the sustainable development strategy adopted by the European Council in Gothenburg in June 2001.

Environment, efficiency and competitiveness as well as growth are key issues of COM(2006) 314 “Keep Europe Moving – Sustainable mobility for our continent – Mid-Term Review of the 2001 Transport White Paper”. In the 2006 Mid-Term Review the Commission expressed its main priorities for ports policy as follows:

- Develop a European ports policy;
- Reduce pollutant emissions from waterborne transport
- Continue to promote Short Sea Shipping and Motorways of the Sea

The Lisbon Strategy on growth and jobs underlines the importance of competitiveness in connection with the sustainable use of resources and transport connections.

The idea of “sustainable development” was also one of the EU objectives in the Amsterdam Treaty. The concept of environmental protection has been reinforced in other Community policies, in particular those related to the internal market, transport and energy. The inclusion of environmental issues in the definition and implementation of other policies is essential for achieving the objective of sustainable development.

The Treaty of Maastricht and the Cardiff Summit in 1998 had included environmental issues in the definition and implementation of other policies, as an essential tool for achieving the objective of sustainable development.

The general objectives of the EU actions on ports policy are linked to general objectives and specific actions of the EU Policy.

#### **2.4.2. Fundamental principles of the EU action**

To verify if the EU has the right to act on a given field, the following conditions have to be met.

Firstly, the Union can only act within the limits of the powers given to it by the Treaties and the objectives assigned to it (the principle of conferral).

Secondly, if the problem falls under a competence shared by the Union and the Member States, the Commission needs to show that the problem cannot be properly solved by the Member States acting alone (this is the first condition set by the subsidiarity principle, also called the “necessity” test).

Thirdly, action at Union level should not go beyond what is strictly necessary to meet its objectives (proportionality principle).

The respect of such principles has been verified to give strength to the EU’s right to act in the field of ports policy.

It is the Commission's role to apply the Treaty and to ensure the well functioning of the internal market. Regarding some of the areas object of the impact assessment, only action at EU level can provide the necessary clarification or level-playing-field among the actors of the European port industry as Member States would either not act spontaneously or would propose solutions which are mere national solutions and diverse among Member States.

Given that no sector-specific legislation exists, due to the fact that it could not be adopted by the European legislator in the past, simplification is not an issue.

### **SECTION 3: OBJECTIVES**

The overall policy objective is to make ports a competitive nodal point in the transport and logistic chain in order to be able to handle the increasing maritime traffic generally expected thus facilitating international extra-EU trade and contributing to an efficient and sustainable mobility within the Union.

Following on directly from the analysis of the problems facing European ports it is possible to identify the following general policy objectives for a European ports policy:

- to ensure that there is sufficient port capacity available to handle the growth in EU trade, and that this capacity is provided at the most suitable location taking into account trade-offs between logistics requirements, construction costs and the protection of the environment;
- to make better use of existing port capacities by providing the right incentives to port managers, operators, workers and users within a level playing field;
- to promote greater freedom of access for new port service providers where this is consistent with safety and security requirements, and can be achieved in a way which improves port efficiency;
- to give port employers greater freedom to select their workforce and negotiate their own conditions of employment, whilst protecting the interests of port workers;
- to improve the public image of ports;
- to increase the transparency of port accounts by encouraging the use of common accounting conventions and formats for financial statements, and the publication of more information about tariffs;
- to set out clear guidelines for the provision of public funding (State Aid guidelines);
- to promote fair competition within and between ports, whilst taking into account the wider external costs associated with port operations at different locations;
- to raise environmental management standards in ports;
- to achieve a better balance between environmental protection requirements (i.e., compliance with existing environmental legislation) and the economic growth objectives set out in the Lisbon Agenda (i.e., port development in view of increasing maritime traffic);

- to increase the use of more sustainable modes of transport for the movement of goods to and from ports within the European Union;
- to increase the competitiveness of SSS within the transport system, particularly in respect of road transport.

These objectives, which do not follow a hierarchical order, have been used to identify the policy options described in Section 4.

The more specific and operational objectives can be summarized in the following table:

### Specific and operational objectives

Topic	Specific / operational objectives	Consistency with EU policies
Concessions for terminals in ports	<ul style="list-style-type: none"> <li>▪ Promote competitive allocation of land to port service providers at new port facilities or existing installations.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Commission interpretative Communication on concessions under Community Law (2000/C 121/02)</li> <li>▪ A forthcoming proposal for a Directive on concessions</li> </ul>
Work in ports	<ul style="list-style-type: none"> <li>▪ Promote more flexible employment patterns and social dialogue</li> </ul>	
Technical – nautical services (towage, pilotage and mooring)	<ul style="list-style-type: none"> <li>▪ Promote freedom of access for new service providers</li> </ul>	<ul style="list-style-type: none"> <li>▪ Green Paper on Sea Ports and Maritime Infrastructure COM (97) 678</li> <li>▪ Communication from the Commission to the European Parliament and the Council: “Reinforcing Quality Service in Sea Ports: A Key for European Transport!” COM(2001) 35</li> <li>▪ Proposal for a Directive of the European Parliament and the Council on Market Access to Port Services COM(2004) 654</li> </ul>
Spatial planning	<ul style="list-style-type: none"> <li>▪ Ensure sufficient port capacity is provided in a timely manner at appropriate locations</li> <li>▪ Use of more sustainable mode of transport to/from ports and within the EU</li> </ul>	<ul style="list-style-type: none"> <li>▪ White paper “European transport policy 2010: time to decide”</li> </ul>
Environmental issues	<ul style="list-style-type: none"> <li>▪ Achieve better balance between environmental protection and economic growth</li> <li>▪ Raise environmental management standards in ports</li> <li>▪ Use of more sustainable mode of transport to/from ports and within the EU</li> </ul>	<ul style="list-style-type: none"> <li>▪ Lisbon agenda</li> <li>▪ Green Paper on Sea Ports and Maritime Infrastructure COM (97) 678</li> <li>▪ Sustainable development strategy</li> </ul>
Financial autonomy, transparency &	<ul style="list-style-type: none"> <li>▪ Increase transparency of port finances</li> </ul>	<ul style="list-style-type: none"> <li>▪ White paper “European transport policy 2010: time to decide”</li> </ul>



tariffs	<ul style="list-style-type: none"> <li>▪ Establish clearer guidelines for the provision of State Aid</li> </ul>	<ul style="list-style-type: none"> <li>▪ Green Paper on Sea Ports and Maritime Infrastructure COM (97) 678</li> <li>▪ Commission Staff Working Document on Public Financing and Charging Practices SEC(2001)234</li> </ul>
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#### **SECTION 4: POLICY OPTIONS, ASSESSMENT OF OPTIONS, COMPARISON OF OPTIONS, CHOICE OF OPTION, CONCLUSION**

The purpose of this section is to consider the individual options to reach the specific objectives listed in the table above.

Some of these options are alternative, some are additive (i.e. they could be combined into a single package of policy measures), and some are sequential (the initial option could be replaced by stronger options over a period of time as attitudes change or more information becomes available).

Some of the options will be relatively easy to introduce because they fall within the Commission's competences, are not costly, and relate mainly to technical issues on which there is already a high degree of consensus. Other options are more controversial and are likely to face political opposition from groups of stakeholders and/or some Member States.

Some of the options have already been developed in detail during the preparation of the two previous Directives on market access to port services, or as part of other Commission initiatives relating to transport or environment. Other options need more research or fine-tuning.

Finally, some of the options are likely to make a very significant contribution towards the achievement of EU long-term policy goals, while others will generate only small-scale improvements in the working of the port system.

For the sake of clarity, this paragraph presents, analyses, compares and chooses the options ordered by policy area.

#### **4.1. Concessions for Terminals in Ports**

##### **4.1.1. Introduction**

When the entity in charge of the development of the port (today the port authority in most cases) decides that a new terminal should be build, it can opt for the direct operation of the terminal (no longer a very common choice), or may decide to entrust the operation to a third party. In many continental countries this is done by granting a "concession" on port-land for a given time (e.g. 30 years). In case the port authority is a contracting entity under the EC procurement rules, it should select the concessionaire with full respect of the EC Treaty principles of transparency and non-discrimination. Ideally the concessionaire should be chosen through a tendering procedure. If a tender procedure is carried out, the selection criterion can be the highest lease that the concessionaire is ready to pay or a more complex criterion. In this context, it should be noticed that 'build and operate' concessions are excluded by the scope of application of the Community directives on public procurement provided that the concessions are awarded by the port authorities for carrying out the port activity. On the

contrary, the entity in charge of the construction of the new terminal may be bound to apply the Community rules on procurement while selecting the building company, which is a matter falling outside the scope of the future communication on ports policy.

#### **4.1.2. Policy options**

4.1.2.1. No action. This option implies that nothing is done at a legislative level. In other words, the status quo would be granted.

It should be emphasised that in some Member States there is an obligation under national law to carry out a formal tender procedure for the selection of the operator in charge of building and operating a new terminal. In those Member States tendering procedures would continue to be performed even if this option is chosen. Should this be the case, port authorities which are allowed to do so under national law, would continue to choose terminal operators on a discretionary basis, in most cases entrusting the new facilities to operators already active in the port in question.

4.1.2.2. Legislative option. In this case the Commission would take a legislative initiative. As far as the issue of terminals is concerned, the Commission would propose that concessions for land in ports should be subject to mandatory tender procedures to be carried out at a European level. The legislative proposal would also provide a maximum duration for contracts, even though it would take into consideration the view put forward by most stakeholders during the consultation, according to which it should be left to terminal operators enough time to amortise the huge infrastructure investments necessary to operate the port facilities. 25 to 30 years would probably be the maximum duration provided for in such a proposal.

4.1.2.3. Soft law option. The Commission could adopt a Communication providing its interpretation on how Articles 43 et seqq. of the Treaty should be applied to the port sector. In this case the Commission would recall the main principles regarding public procurement and concessions (such as the *Telaustria* judgement<sup>6</sup> and the communication on concessions of 2000<sup>7</sup>). The Commission would state that the choice of concessionaires for port land without any competition is against Community law and that some form of transparency – if not a tender procedure – would be needed for that purpose. However, transparency alone would not be enough: some form of competition among all interested undertakings across the Community should also take place. The use of tender procedures would appear the best way to ensure effective open access to the market to all European undertakings.

#### **4.1.3. Assessing the options**

Experiences with the past proposals for a port services Directive, and the views expressed by stakeholders during the consultation process, suggest that there would be considerable opposition to the legislative option. However, many of its benefits could be achieved through the soft law option, which would also be less costly. The costs and benefits of the soft option are more difficult to quantify, as it is not clear how much discretion will be given to port authorities in designing their own procedures for choosing terminal operators. As a result, the legislative option has been mainly assessed.

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<sup>6</sup> Case C-324/98 *Telaustria Verlags Gesellschaft mbH v. Post & Telekom Austria* (*Telaustria*).

<sup>7</sup> Commission interpretative communication on concessions under Community law (2000/C 121/02).

The primary objective of this policy option is to allow new cargo handling companies' access to the land and infrastructure they need in order to be able to offer services to port customers, primarily shipping lines but also – in the case of non-stevedoring services such as warehousing and logistics – shippers. The arrival of new market entrants is expected to increase the level of intra-port competition amongst service providers, increasing efficiency and reducing prices.

4.1.3.1. Scale of problem. The Impact Assessment assumes that competitive assignment of land and the right to supply services would be restricted to:

- Public sector port authorities. It therefore excludes privately owned ports such as those in the UK.
- Cargo handling activities which include stevedoring. This eliminates many ancillary port services – such as ship repairing, container cleaning, contracted out maintenance, cargo inspection, shipping and Customs agencies, long-term storage, cargo distribution and logistics, and support services such as canteens, shops and general business services – where the impact of increased competition is likely to be small but difficult to evaluate. Technical-nautical services are dealt with separately under a different policy option.
- All the type of cargo handling apart from oil terminals.

Four specific situations cause land to become available for new port service providers:

- Traffic growth: construction of new port facilities to accommodate future traffic growth, both by the public authorities and by private operators where the “right to build” on either a freehold or build-operated-transfer concession basis is granted by a public authority;
- Privatisation: the transfer of land from public sector to private sector control as a result of port reforms and/or the withdrawal of public port authorities from cargo handling operations;
- Contract roll-overs: the expiry or termination of existing contracts where these do not include an option for automatic renewal;
- Other reasons<sup>8</sup>, for example shipping lines wishing to operate dedicated terminals for their own ships, Asian terminal operators seeking to enter the European market through the construction of new facilities, or transshipment activities.

4.1.3.2. Scope for change. Many ports have already adopted competitive selection procedures for the award of new leases or concessions, even though these procedures may not be fully compliant with EU procurement rules. A steady improvement in market access for new service providers is therefore likely to occur even in the “do nothing” situation.

A detailed survey of how ports award contracts at present could not be carried out within the time and budget constraints of the study carried out by the consultant and on which the present impact assessment is based. However, to better understand the impact of the “legislative scenario”, an assessment has been carried out for a selection of 92 European ports

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<sup>8</sup> This situation has not been considered in the analysis because it is too specific and unpredictable.

(representing almost 80% of the European port industry in terms of total throughput) to make an estimate of the future cargo tonnage which would be available for new concessions. The amounts of cargo which could potentially be assigned to new operators via competitive selection has been added for three main sources – new terminal construction, privatisations, and the roll over of existing contracts – to provide an estimate of the total potential market for new cargo handling companies and existing cargo handling companies competing for new contracts. With the legislative option in place, it is assumed that 100% of all new contracts will be awarded competitively, even if this does not necessarily mean through competitive international tendering on the basis of price alone.

4.1.3.3. Costs. The costs of providing more open access to cargo handling companies are amongst the criticisms of the 2004 proposal for a Directive on Market Access to Port Services. They include:

- Tendering costs
- Contract administration and regulation costs
- Increased litigation
- Sub-optimal use of port capacity (duplication of functions, need to provide additional capacity to accommodate traffic peaks, reductions in private investment in equipment, asset deterioration due to reduced maintenance towards the end of the contract etc)
- Increase in costs due to shorter amortisation periods for investment

One important factor is the one-off cost for setting-up the new regime, consultation and transparency by the port authority, and for transitional arrangements. In particular these costs are associated with the periodic tender process (i.e. preparation, advertising, managing, etc) and with ongoing monitoring of licensee performance. Total bidder costs are expected to be between € 100 k and € 140 k per bidder per transaction. Thus, depending on the number of potential bidders total costs for bidding procedures are estimated to be in the range of € 20 m to € 30 m in the period under consideration (2007 – 2026).

4.1.3.4. Benefits. The benefits of competitive selection of terminal operators include, amongst others:

- Faster cargo handling, resulting in shorter ship turn-round times and reduced dwell times for cargo.
- Lower operating costs arising from investment in new equipment, more effective deployment of labour, and better procurement procedures.
- Lower cargo handling charges as a result of increased competition.
- More investment as a result of being able to draw on new sources of funds.
- Capture of a higher proportion of the economic rent (profits) of private port operations by the public sector in situations where the award of contract is based on the size of the payments made to the port authority (rents and other forms of lease payment, cargo royalties and other concession fees).

As a result, a subjective value per ton/TEU has been assigned to each port/traffic type based on knowledge of the market in each Member State and the types of selection procedure likely to be used there or required by the EU policy option. This is not entirely satisfactory, but is probably the best that can be done within the time and budget constraints of the study carried out by the consultant and on which the present impact assessment is based. The following table shows the unit benefits assumed for different types of cargo.

**Table 0-1 Unit benefits in relation to average tariffs**

	<b>Dry bulk</b>	<b>Container</b>	<b>General cargo*</b>
Benefit (€ / ton or €/ TEU)	0,22	3,68	0,88
Average tariff (€ / ton or €/ TEU)	4,4	73,5	17,6

\*Value applied both to Ro-Ro and Break-Bulk

Source: PwC estimation

Thus, competitive allocation of land to cargo handling companies should produce an overall positive impact that can be estimated at less than € 1 billion in the period of 20 years considered in the analysis (2007-2026).

**4.1.4. Comparing the options**

A Directive is likely to be targeted on those ports which will benefit most from increased competition, so the overall impact should be a net benefit in excess of € 100-200 million.

The "soft law option" could obtain similar benefits whilst reducing the additional costs of the Directive, namely tendering cost. Any measure should not impose a particular form of port ownership or organization, nor define new safety standards, but it would establish principles aiming at opening up the market to potential new entrants and enhance competition.

The primary objective is to allow new cargo handling companies to access the land and infrastructure they need in order to be able to offer services to port customers, primarily shipping lines but also shippers.

Even though many ports have already adopted competitive selection procedures for the award of new leases or concessions, these procedures may not be fully compliant with EU principles. There are ports that have no experience of awarding cargo handling rights to any operators other than themselves or have no known position on the assignment of contracts. So it is clear that the "do nothing scenario" is quite unsatisfactory in term of opening up the market and increasing competition.

The table below shows the principal costs and benefits of providing more open access to cargo handling service and more competitive selection of terminal operators:

**Cost and benefit of policy option**

<b>Cost</b>	<b>Benefit</b>
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<b>Cost</b>	<b>Benefit</b>
<ul style="list-style-type: none"> <li>▪ Tendering costs</li> <li>▪ Contract administration and regulation costs.</li> <li>▪ Increased litigation.</li> <li>▪ Sub-optimal use of port capacity (duplication of functions, need to provide additional capacity to accommodate traffic peaks, reductions in private investment in equipment, asset deterioration due to reduced maintenance towards the end of the contract etc)</li> <li>▪ Increase in prices due to shorter amortisation periods for investment</li> </ul>	<ul style="list-style-type: none"> <li>▪ Faster cargo handling ( shorter ship turn-round times, reduced dwell times for cargo)</li> <li>▪ Lower operating costs arising from investment in new equipment, more effective deployment of labour, and better procurement procedures.</li> <li>▪ Lower cargo handling charges as a result of increased competition.</li> <li>▪ More investment as a result of being able to draw on new sources of funds.</li> <li>▪ Capture of a higher proportion of the economic rent (profits) of private port operations by the public sector in situations where the award of contract is based on the size of the payments made to the port authority (rents and other forms of lease payment, cargo royalties and other concession fees).</li> </ul>

#### 4.1.5. Choice of option

Experiences with the past proposals for a port services Directive, and the views expressed by stakeholders during the consultation process, suggest that there would be considerable opposition to the legislative option. However, many of its benefits could be achieved through the soft law option, which would also be less costly. Therefore, the soft law option has been chosen.

#### 4.1.6. Conclusion

In the light of existing legislation, ECJ jurisprudence and Commission Communications, the Communication on a European Ports Policy clarifies in paragraph 4.3., how the principles set out therein apply to port concessions.

### 4.2. Work in Ports

#### 4.2.1. Introduction

The current practice for stevedoring is extremely diversified across the Community, in many cases also within a same Member State. The issue at stake for this specific aspect is mainly the one of 'pooling'. Port 'pools' are entities providing staff to terminal operators. Pools may provide whole or part of the staff needed, at all times or only on the occasion of peaks in demand for stevedoring. Where pools are very powerful, not only terminal operators are obliged to use pool staff, but the pool also decides the number of workers to be employed for a given job. This decision may be based on criteria other than the objective need for manpower, with obvious consequences on cost. In other ports pools are less powerful. They only provide less skilled personnel, and/or staff temporarily needed for facing traffic peaks. In the container business most staff is therefore permanent, which is also in line with their advanced training (e.g., for cranes).

#### 4.2.2. Policy options

4.2.2.1. Do nothing option. Without any intervention the described scenario would probably continue to gradually evolve towards the overcoming of the pool system, as it is slowly happening in many ports. It should be recalled, however, that in some parts of the Community

this evolution could be slower, due to the opposition by unions. The described trend could also affect the attractiveness of the port system as a whole, and therefore, the development of ports and the progress of modal shift. Any legislation in force in the Member State imposing the use of pools could be challenged by means of infringement procedures. However, it should be noticed that in some cases pools are used because of pressure by unions, rather than on the basis of legal provisions.

4.2.2.2. Legislative option. A legislative proposal could establish that any independent provider (individual or agency) should be able to be hired by terminal operators. The market for work in port would be liberalised.

4.2.2.3. Soft law option. In an interpretative Communication the Commission might come to the conclusion that any legislation imposing the use of staff originating from the pools is in conflict with the Treaty principles. In practice, any terminal operator needing new staff should be entitled to hire properly trained independent staff or staff from temporary work agencies. It should be noticed that the practice of pooling appears to be less in conflict with the Treaty principle of free movement of workers, since the pools make no discriminations based on nationality.

4.2.2.4. Voluntary-mixed option. In the course of the consultation it has appeared that both workers and employers (terminal operators) are willing to engage in a dialogue, in particular concerning contractual issues ("social dialogue"). Furthermore, as it has been mentioned above, all the progress on flexibility that has been achieved in some countries has been made possible by years-long negotiations by social partners. Encouraging social dialogue should also be taken into consideration and separately assessed. Should this option be chosen, social partners would be invited to set up a dialogue process, if necessary in the form of a structured "social dialogue" such as it exists for maritime transport, aimed at overcoming the least fruitful constraints that still exist in some ports. This option has been named as "mixed-voluntary", because the voluntary approach would not be entirely independent from the "soft law option". In fact, social partners would be invited to negotiate once the Community law framework has been clarified by the Communication.

### **4.2.3. Assessing the options**

Experiences with the past proposals for a port services Directive, and the views expressed by stakeholders during the consultation process suggest that there would be considerable opposition to the legislative option. However, many of its benefits could be achieved through the soft law option, which would also be less costly. The costs and benefits of the soft option are more difficult to quantify. As a result, the legislative option has been object of assessment.

The primary objective of the options for work in ports is to increase labour flexibility at ports where employers are obliged to use labour pools for the supply of regular and casual workers, rather than being able to select their own staff and negotiate their own terms and conditions of employment.

4.2.3.1. Scale of problem. The first task of the analysis is to define the dock labour regime for different European countries and to identify the Member States/ports where the use of labour pools is still mandatory<sup>9</sup>

Port labour practices have been gradually liberalised in several Member States over the last 10-20 years but there is no common and clear European labour scheme.

Annex IV summarises the current labour schemes in several European countries. It shows that many aspects must be considered to define how work in ports is organised, for instance:

- Presence of labour pool and how the entry of workers into the pool is controlled.
- How workers are assigned to employers (shift patterns, minimum hours of work, ability to employ pool workers on a semi-permanent basis)
- How workers are paid (attendance allowances, minimum guaranteed income or hours of employment, payment per hour worked, overtime provisions, social security provisions and other benefits).
- How employers pay for the labour they use.
- Negotiating procedures for terms and conditions of employment.
- Training arrangements.
- How the pool recovers any financial deficits (revenues received from employers less payments made to workers).

All these aspects have a direct influence on ports' productivity and competition among ports and must be considered in order to improve the efficiency of the port industry.

Container traffic development has also influenced port labour productivity in the last 20 years. Container terminals are a capital intensive business characterised by higher labour productivity with respect to conventional cargo. The common aspect that has characterised the development of workers' performances has been negotiating procedures for terms and conditions of employment among employers, unions, employees and other public bodies. This seems to indicate that labour schemes have a limited impact on labour productivity. Social dialogue among stakeholders therefore looks to be the most important driver to improve productivity in European ports.

4.2.3.2. Costs. The main "one-off" costs of abolishing or substantially modifying compulsory labour pools will be compensation payments and/or loss of earnings for redundant workers, and the costs of transferring labour to individual employers. If the EU proposal is strongly opposed, there could also be a significant loss of earnings caused by strike action. Worse perhaps, if this is not done properly, these measures could also lead to bad social relations and to a negative appeal of ports.

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<sup>9</sup> "The expression "mandatory" labour pool can be interpreted in different ways:  
- compulsory by national or local legislation as in the case of the Port of Antwerp, or  
- business agreements/partnerships run jointly by employers and unions such as in Hamburg and in Lisbon



Labour costs may increase if employers have to hire more labour on a permanent basis in order to cover traffic peaks, and if they provide better terms and conditions of employment. However these additional costs are likely to be offset by higher productivity rates, and slower increases in the size of the workforce over time as a result of more flexible manning arrangements.

There could also be significant costs in terms of use of less skilled labour, and the reduced power of the unions to intervene when employers do not meet agreed standards.

**4.2.3.3. Benefits.** The main benefits associated with more flexible employment patterns include:

- Higher labour productivity due to selective employment of the best workers/widening of the search area for new employees, and regularity of employment (increased familiarity of the labour force with the employer's business).
- Greater flexibility in the use of labour, with a closer correlation between hours paid and hours worked, less idle time spent waiting for work or waiting (unemployed) for the end of the shift, more use of multi-skill to enable the same worker to do several different jobs, and more cost-effective use of overtime working.

#### **4.2.4. Comparing the options**

The primary objective of the policy options for the “work in ports” regulation is to increase labour flexibility. The port situation is very heterogeneous, so the implementation of a Directive is unlikely to meet the approval of all stakeholders. In summary, the lack of any clear relationship between port labour schemes and work force productivity, the heterogeneous characteristics of each port, and the total estimated costs of the transition programmed do not support a Directive.

The common aspect that has characterised the improvement of workers' performance has been the use of negotiating procedures for terms and conditions of employment, involving employers, unions, employees and other public bodies. Social dialogue among stakeholders looks to be the most important driver to improve productivity in European ports, reducing negative effects such as labour redundancy. Negotiation and social dialogue allow a better balance to be maintained between the needs, characteristics, and particular history of each port.

The issue of social dialogue emerged from the consultation. There are examples of ports with labour-related difficulties that have overcome these through social dialogue (e.g. Rotterdam, Dunkirk). Therefore, a formal social dialogue at Commission level will be proposed. This can indeed help to achieve the long-term objective of improving productivity and, ultimately, make ports more attractive for customers, and contribute, in this way, to the development of maritime transport, leading in turn to more and better jobs. The idea of setting up a formal social dialogue has been discussed with the competent Commission services.

Moreover, there are currently no specific Community rules on training for port workers. Training of port workers has become of primary importance for the safe and efficient operation of ports. Port equipments have become technologically advanced and often complex tools. Work in ports has consequently evolved and, as the consultation has shown, a set of common requirements for training of port workers could be established at Community level.

One of the most important actions that could mitigate these health and safety costs is the planning and development of periodic training programme. Different solutions are developed in European port, for instance in Hamburg and Bremen port enterprises and unions have established a joint Dockworker Training School. The following objectives should be pursued in order to mitigate negative impacts:

- Upgraded quality standards
- professional skills and
- increase “safety culture”.

The implementation of action on these aspects could generate, among others, the following benefits:

- professional efficiency
- reduction in overall work fatalities.

The implementation of a training system implies initial and operational costs. The initial costs are related to the development of a training scheme (e.g. ILO Dockworker training programme). The operational costs include training costs for port workers. The training costs can be divided into three main components:

1. costs of training scheme design;
2. operational cost (costs of the training itself);
3. costs of evaluation (monitoring system).

The initial cost of a training scheme design depends on the type of courses to be provided according to the needs of port workers that change port by port.

The training operational cost depends on the number of port workers that need to be trained to carry out a new labour. Dockworker training is mainly organised by the private port companies for their employees. Nevertheless, port workers are not all permanently allocated to individual port employers (e.g. casual workers). A training system is particularly important for casual workers to avoid lowering safety standards due to higher labour turnover rates and less skilled labour. The number of casual workers depends on work organization in each European port or in each European country and cannot be easily estimated at European level (macro level).

An estimation of the costs and the net outcome of this approach is thus not possible at this stage of the analysis and in the time frame given.

Furthermore, it should be noticed that a significant number of occupational accidents including fatal ones<sup>10</sup> still occur in ports. A close monitoring of the implementation in ports of Community rules on health and safety at work would be desirable.

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<sup>10</sup> Three port workers were reported during the six month consultation process that led to this communication

Finally, the issue of flexicurity should be further assessed, also in the light of the Commission Communication on Flexicurity.<sup>11</sup>

The following table summarizes the main costs and benefits that could be generated by a Directive which focuses on greater freedom and flexibility of employment.

#### Cost and benefit of policy option

Cost	Benefit
<ul style="list-style-type: none"> <li>▪ <b>The main “one-off” costs</b> are for abolishing or substantially modifying compulsory labour pools (compensation payments and/or loss of earnings for redundant workers, costs of transferring labour to individual employers). If the EU proposal is strongly opposed, there could also be a significant loss of earnings caused by strike action.</li> <li>▪ <b>Labour costs:</b> may increase if employers have to hire more labour on a permanent basis in order to cover traffic peaks, and if they provide better terms and conditions of employment. (these costs could be offset by higher productivity rates).</li> </ul>	<ul style="list-style-type: none"> <li>▪ <b>Higher labour productivity:</b> due to selective employment of the best workers/widening of the search area for new employees, and regularity of employment.</li> <li>▪ <b>Labour training programmes:</b> enlarged and better targeted.</li> <li>▪ <b>Greater flexibility in the use of labour:</b> closer correlation between hours paid and hours worked, less idle time spent waiting for work or waiting (unemployed) for the end of the shift, more use of multi-skill to enable the same worker to do several different jobs, and more cost-effective use of overtime working.</li> </ul>

#### 4.2.5. Choice of option

Experiences with the past proposals for a port services Directive, and the views expressed by stakeholders during the consultation process suggest that there would be considerable opposition to the legislative option concerning labour arrangements in ports. However, many of its benefits could be achieved through the soft law option, which would also be less costly. Therefore, the soft law option has been chosen.

There are currently no specific Community rules on training for port workers. The Commission recognizes that training of port workers has become of primary importance for the safe and efficient operation of ports. Therefore, the legislative option has been chosen.

At the European Union level, the general rules for the protection of health and safety of workers at work are laid down in the Directive 89/391/EEC<sup>12</sup> (the "Framework" Directive), which lays down rules on health and safety related training of workers which fully apply to work in ports. Full respect and enforcement of these rules is crucial for improving working conditions.

<sup>11</sup> Communication "Towards Common Principles of Flexicurity: More and better jobs through flexibility and security", COM(2007) 359.

<sup>12</sup> Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ L 183, 29.6.1989, p. 1), Article 12.

#### **4.2.6. Conclusion**

The Commission will encourage the establishment of a European sectoral social dialogue committee in ports within the meaning of Commission Decision 98/500/EC. If such a committee is established, the Commission will promote an active contribution of the social partners to management of change, modernisation and more and better jobs.

The Commission will propose a mutually recognizable framework on training of port workers in different fields of port activities.

The Commission will closely monitor the implementation in ports of Community rules on health and safety of workers at work. The Commission will also closely follow the proper collection of statistics relating to accidents.

### **4.3. Technical-Nautical Services**

#### **4.3.1. Introduction**

Technical-nautical services are towage, pilotage and mooring. The consultation has revealed that, as a matter of principle, there are no real problems with towage, except that the market needs to be monitored from an anti-trust point of view, like any other. As for pilotage, shipowners insist on the need for extending the practice of exemption from the obligation to use a pilot (Pilot Exemption Certificates) for "frequent users" of a given port. This is something that can be recommended but certainly not imposed. As for mooring, customers would like to be able to use their land-based staff.

#### **4.3.2. Policy Options**

4.3.2.1. Do nothing option. Towage would continue to be provided as it is currently, i.e., with competition among different operators in several big ports, but within the framework of a legal or *de facto* monopoly in all other cases. The same would apply to pilotage, with competition in fewer cases. The same applies, finally, to mooring, for which the cases of competition are limited, indeed.

4.3.2.2. Legislative option. Technical nautical services would be liberalised by means of a Directive or by means of specific provisions to be introduced in a Directive on port services. Those provisions would impose the opening of the market for those services to any Community provider.

4.3.2.3. Soft law option. Also in this case the policy option would consist in detailing how the Treaty principles apply to technical-nautical services.

#### **4.3.3. Assessing the options**

The legislative option has been object of assessment.

The primary objective of this policy option is to allow the opening of the market to any Community provider, to promote competition and to stimulate and enhance the efficiency of port services. Opportunities for opening up the market for technical-nautical services are most likely to occur in the area of towage at large ports, and mooring services at dedicated terminals operated by shipping lines and large common user terminals.

Pilotage is still considered a public service in most ports, where concerns about ship safety have led to widespread rejection of the concept of competitive selection. For towage, there are additional concerns about the commercial viability of multiple operators given the capital intensive nature of the business. And for mooring services the volume of work at many ports may be insufficient to support more than one operator unless staff can be deployed on other activities in between mooring operations. In highly unionised ports this is often prevented by rigid job demarcation lines.

4.3.3.1. Pilotage. The impact of any EU measure on pilotage operations will be too small to justify assessment, for three main reasons:

- There are very few commercial companies offering pilotage services at present - the main alternative to a port authority monopoly is a pilot's cooperative based on work-sharing, price-fixing and revenue-pooling.
- Even if there is some opening-up of market entry, pilotage is likely to remain strictly regulated, with prices fixed to avoid any cost-cutting that might endanger safety.

Most ports will use safety as a justification for not changing their existing arrangements. Experience with the proposals for a Directive on Market Access to Port Services suggests that it will be difficult to get approval for any legislation which does not allow port authorities to continue with a closed market for safety reasons.

4.3.3.2. Towage. An analysis of towage provision in 55 European ports has been carried out (based on European Tugowners' Association data), showing for each of them the relationship between the number of towage service providers and the port cargo throughput (m tons) in 2006. It is important to note that cargo throughput is not a sufficient indicator for assessing the amount of towage work available in a port, since a combination of local navigation condition and the number and type of ships should also be considered. However cargo throughput was used as a “proxy” for ship movements. Analysis shows that 25 out of 55 ports have more than one towage provider. These are generally but not exclusively the largest ports. However, it is interesting to note that some of the largest ports – which appear to have sufficient traffic to justify more than one operator – are served by only one operator. However, there is no clear direct correlation between the number of towage companies and cargo throughput.

4.3.3.2.1. Costs. The development of the policy option results in three different types of cost: one-off transaction costs, operational costs, social costs.

*a) One-off Transaction Cost*

One important factor is the one-off cost for setting-up the new regime (procedure for ensuring quality of service and public benefits, consultation and transparency by port authority) and for the transition. In particular these costs are associated with the periodic tender process (i.e. preparation, advertising, managing...) and with ongoing monitoring of licensee performance. An estimate of the cost of carrying out tender shows that these could range from € 150 k to € 200 k for port authority conducting the tender, and from € 120 k to € 140 k for each bidder participating in the tender process. Thus, depending on the number of potential bidders total costs for bidding procedures are estimated to be in the range of € 600 m to € 1 billion.

A Directive opening the market for towage services will produce costs that are passed on by the port authority, may be charged on by potential towage service providers too (as fees).

#### *b) Operational Cost*

Most costs of a towage company are fixed (investments in tugboats, licence and labour costs are together approximately 60% of the total cost). So, the profitability of a towage service depends on use of tug fleets and crews, and on economies of scale. The number of tug jobs per day or per ship is a common indicator for performance monitoring. The entry of an additional operator would result in significant loss of economies of scale. Unit costs rise when the tug utilization rate per tug company falls. As shown before, economies of scale for the tug fleet of one operator could be exhausted at a specific number of tug jobs per year, whilst the minimum total number of tug jobs per year required in the port will grow with an increase of number of operators.

Moreover, without a competitive market, it is possible that the increase in unit cost will be charged by operators directly as part of the final price. The evidence of this assumption is that usually the price of tugs per job rises as the number of tug jobs per tug is reduced.

#### *c) Social Cost*

A Directive is likely to affect the market structure by reducing the number of firms or influencing the size of firms. Because of their scale, larger tug operators could potentially take advantage of the Directive and expand the scope of their activities. This will result in the increased dominance of these firms at the expenses of smaller-scale operators. This could be beneficial in term of efficiency gains and cost savings but represents a social cost.

4.3.3.2.2. Benefits. Benefit could be generated in terms of price reductions and innovation and service quality improvements. The main benefit of increased competition is likely to be reduced charges. In a situation where harbour towage is carried out by private companies, if the number of towage operators rises, competition increases and charges could fall. The new entrant may be required to offer lower rates in order to build market share. However, too many operators in the market will result in significant loss of economies of scale. Another important benefit is that with the opening of the market, firms have appropriate incentives to invest, innovate, improve the range/quality of the service, and increase productivity. On the other hand, by removing the discipline of potential entry on towage providers and competitive pressures, it is possible that a static situation may have deleterious effects on dynamic efficiency.

#### 4.3.3.3. Mooring

4.3.3.3.1 Scale of problem. The idea is to reconcile the need to allow effective access of competent mooring service providers by enhancing competition and promoting an efficient pricing system, with the need to ensure a satisfactory level of safety and professional qualifications.

4.3.3.3.2 Market and competition. Mooring services are provided in some Member States exclusively by the port authority, in other Member States there is a mixed system: in some ports the port authority operates the service, in other ports private companies do it. In most ports private companies carry out mooring services under the port authority's supervision and a licence or concession is often required to operate. Lack of homogeneous correlation

between throughput and number of mooring operators is explained by the fact that demand for mooring services does not depend solely on the throughput of a port, but it depends on a larger number of variables. These are the number and the size of ships requiring the service, availability required by the port authority, safety regulations, geographical features of the port, and the condition of the port's infrastructure and weather conditions. This suggests that when towage services are liberalised or regulated by competitive rules, the market naturally evolves to a higher number of operators for a specific level of "work required". It is possible to define a throughput range over which having more than one operator can be not only be feasible but also profitable.

Annex V gives an overview of the European situation regarding the condition under which mooring activities are carried out in various Member States.

The first step of the analysis consisted in an extensive overview of the organization of mooring services in European ports, in terms of the number of operators, the concession regimes, and suppliers of the service. Moreover, discussions have been held with the European Boatmen's Association in order to deepen the knowledge of the market. Data about the number of mooring operators and throughput have been collected for 53 ports, in order to identify possible connections between traffic magnitude and the degree of competitiveness of the market. The analysis shows that in the majority of European ports there is just one operator. Of the 53 ports examined, 44 had only one operator; this is equivalent to 83% of ports. The scenario is quite different: while in Northern Europe there are several ports (8 out of a total of 21 ports) with more than one mooring operator, in the Mediterranean the "one operator situation" is the most common (31 ports out of 32).

A survey has been carried out to collect information about the current situation in the mooring service market in European ports, to monitor the existing level of competition. The results of this study point out that usually mooring service capacity is sufficient to supply the total demand in the port. In general, a direct correlation between total throughput and number of operators in European ports cannot be inferred. In most ports the mooring service, in consideration of its safety implications and universal nature, is under the supervision of the port authority acting as a regulator and supervisor of this service and ensuring that it is provided in conditions of safety, continuity, universal coverage and high quality. This is often done by means of concessions or licenses or authorizations to provide the service (sometimes a tendering procedure is applied). Often the port authority also controls prices in accordance with the estimated operating cost of the service or establishes a price cap. Furthermore, in many cases the port authority itself provides the mooring service.

To find out what is the most suitable option to adopt, it is useful to consider the particular characteristics of mooring services. Two aspects can be underlined. Firstly, economies of scale are likely to be less important for mooring services than in the case of towage. In fact, mooring is a labour intensive business, which could potentially be carried out by small operating units. While towage is a "capital intensive" service, mooring is a primarily a "human intensive" service. Secondly, safety represents a crucial aspect in mooring services. The safeguarding of high levels of safety is a must for all European countries, even if they currently have different standards. In this context, mooring operators play a crucial role. Currently, training and qualification standards in most European countries result in high standards of service. The crucial need is to develop an effective pricing system, taking into consideration the peculiar characteristics and needs of the port and ensuring a high level of safety. To achieve this goal, it is not necessary to set limits to the minimum number of operators or to identify a specific organizational form; instead, it is important to open the

market to potential providers. The threat of entry of new providers would be sufficient by itself to create a competitive market. Moreover, the supervision of the port authority remains essential in respect of safety standards and high quality of services.

4.3.3.3.3 Costs. The implementation of a Directive aimed at opening the market for mooring services and enhancing competition, would entail the following costs. Economies of scale are likely to be less important for mooring services than for towage, so the entrance of additional operators would not result in significant loss of economies of scale. An increase in the number of mooring service operators will impact on the labour intensity of employees. The main consequence will be an increase in idle time, which will in turn impact on costs. The magnitude of this impact will depend on the propensity of operators to integrate mooring activity with further services like the supply of workboats for inspection and repair work, or launches for crew transfers to ships at anchor. Safety standards vary in MS: new entrants could generate a fall in quality and safety of service. High turnover and efforts to reduce price could generate a loss of experience and professional skills and could be to the detriment of the qualification levels of mooring operators and of safety in general. Transaction costs associated with the licensing of new service providers are likely to be relatively small, as permission to provide services is likely to be granted to all providers who are “fit, willing and able” to provide the services. On-going administration costs could be higher, however, if port users have to contact several organisations in order to find one which is able to provide mooring services at the time they are needed. The limited economic size of companies currently operating mooring service makes it highly probable that the new entrants in the market would be large firms already present in the transport chain, expanding their operations. Therefore, competitive pressure would derive from self-handlers rather than from real newcomers. This will result an increase in the dominant position of these firms to the detriment of smaller operators. This would lead to a benefit in terms of efficiency but would entail a social cost.

4.3.3.3.4. Benefit. The primary and most evident benefit of increased competition are expected to be lower prices. Currently there are many situations of monopoly enabling mooring operators to take advantage of their privileged position to apply high prices. In a liberalized market competition deriving from new entrants or even from the threat of potential new entrants will push prices downward.

4.3.3.4. Comparing the options. The “do nothing option” (ports continue to be free to establish their own rules and requirements) is an uneconomic solution in terms of competition opportunities, buyer choice and improvements in efficiency. Based on these arguments, a legislative solution, a Directive, is likely to have a potential impact on competition and towage charges, but may burden existing and new entrants with additional (set-up and on-going) costs which may hamper the overall efficiency of the industry. However, the “soft law option” permits similar benefits to be achieved whilst reducing the additional cost.

The “soft law option” could obtain similar benefits whilst reducing the additional costs of the Directive.

The primary objective is to allow the opening of the market for technical-nautical services (Pilotage, Towage and Mooring) to any Community provider, to promote competition and to stimulate and enhance the efficiency of all port services.

4.3.4.1. Pilotage. The impact of any EU measure on pilotage operations will be too small to justify assessment, for three main reasons:



- There are very few commercial companies offering pilotage services at present - the main alternative to a port authority monopoly is a pilots’ cooperative based on work-sharing, price-fixing and revenue-pooling.
- Even if there is some opening-up of market entry, pilotage is likely to remain strictly regulated, with prices fixed to avoid any cost-cutting that might endanger safety.
- Most ports will use safety as the justification for not changing their existing arrangements. Experience with the proposals for a Directive on Market Access to Port Services suggests that it will be difficult to get approval for any legislation which does not allow port authorities to continue with a closed market for safety reasons.

4.3.4.2. Towage. Analysis results show that 25 out of 55 major ports have more than one towage provider. When a restricted area with the same characteristics and the same service management is considered (i.e. a specific country), it can be observed that there is a correlation between cargo throughput and the number of operators.

When towage services are liberalised the market can naturally evolve to a higher number of operators once a specific level of “work required” has been achieved. Thus it is possible to define a throughput for each port range over which having more than one operator can be not only feasible but also profitable.

The following table focuses on main cost and benefit in a “legislative option scenario”:

#### Cost and benefit of policy option

Cost	Benefit
<ul style="list-style-type: none"> <li>▪ <b>One-off Transaction Costs:</b> one-off cost for setting-up the new regime (procedure for ensuring public service quality and benefit, consultation and transparency by port authority) and for the transition arrangements. These costs are associated with the periodic tender process and with ongoing monitoring of licensee performance. Thus, depending on the number of potential bidders, total costs for bidding procedures are estimated to be in the range of 600 to 1000 k€ .</li> <li>▪ <b>Operation Costs:</b> Entry of an additional operator would result in significant loss of economies of scale and could raise the overall cost of providing towage service to more than in the previous situation.</li> <li>▪ <b>Social Costs:</b> a structured Directive is likely to affect the market structure reducing the number of firms or influencing the size of firms. Larger tug operators, because of their scale, could potentially take advantage of the Directive and expand the scope of their activities. This could represent a social cost if it forces existing companies out of business.</li> </ul>	<ul style="list-style-type: none"> <li>▪ <b>Price reductions:</b> The main benefit of increased competition is likely to be reduced charges. Generally tug operators are using their monopoly position to raise prices. The opening of the market would promote competition and produce price reductions.</li> <li>▪ <b>Innovation and service quality improvements:</b> Another important benefit is that with the opening of the market, firms have the appropriate incentives to invest, innovate, improve range/quality of the service and increase productivity.</li> </ul>

4.3.4.3. Mooring. The idea is to allow effective access for competent mooring service providers, enhancing competition and promoting an efficient price allocation whilst ensuring a satisfactory level of safety and professional qualifications. A direct correlation between total throughput and number of mooring operators in European ports cannot be inferred.

The following table focuses on main cost and benefit in a “legislative option scenario”.

#### Cost and benefit of policy option

Cost	Benefit
<ul style="list-style-type: none"> <li>▪ <b>Economies of scale:</b> the entrance of additional operators would not result in significant additional costs would result in significant loss of economies of scale (these are likely to be less important for mooring services than for towage).</li> <li>▪ <b>Labour intensity</b> of employment. Main consequence will be an increase in idle time, which will in turn impact on costs.</li> <li>▪ <b>Safety standards:</b> new entrants could generate a fall in quality and safety of service. High turnover and efforts to reduce price could generate a loss of experience and professional skills;</li> <li>▪ <b>Transactions costs:</b> licensing of new service providers (relatively small), on-going administration costs</li> <li>▪ <b>Social Cost:</b> competitive pressure would derive from self-handlers rather than from independent newcomers. This would lead to a benefit in terms of efficiency but would entail a social cost.</li> </ul>	<p><b>Price reduction:</b> The main benefit of increased competition is likely to be reduced charges.</p>

#### 4.3.5. Choice of option

Experiences with the past proposals for a port services Directive, and the views expressed by stakeholders during the consultation process suggest that there would be considerable opposition to the legislative option. However, many of its benefits could be achieved through the soft law option, which would also be less costly. Therefore, the soft law option has been chosen.

#### 4.3.6. Conclusion

In the light of existing legislation, ECJ jurisprudence and Commission Communications, the Communication on a European Ports Policy clarifies in paragraph 4.4., how the principles set out therein apply to technical-nautical services.

### 4.4. Environmental Issues

#### 4.4.1. Introduction

Port projects may be located nearby high value natural areas. Some of those values are protected by national and/or EU legislation as the 79/409 *Birds* and the 92/43 *Habitats*

Directives. The application of the Birds and the Habitats Directives requests a better planning of the port construction process. If this is not taken into account at a sufficiently early stage, that may lead to severe delays and even to the outright cancellation of projects.

Environmental legislation states that, in case of negative assessment of the ecological implications of a project for a protected site, it should be demonstrated as a condition for the project being approved as such that both, no alternative solution exists, and that the project is justified by imperative reasons of overriding public interest. In addition, compensatory measures must be taken to assure that the overall coherence of the Natura 2000 network is protected.

Every port project has to follow the same procedure for environmental assessment and clearance for approval. As a consequence, no single project is given preference at National or EU level when assessing environmental effects and, sometimes, shortage of administrative capabilities may negatively influence the procedure of environmental assessment.

Finally, dredging and land filling are affected by the following three groupings of EU and international legislation:

- Characterization of the sludge (sand, silt or clays): list of hazardous waste (Council Directive 94/904; Decision 2000/531; Directive 2001/118 establishing the European Waste Catalogue);
- Waste Framework Directive (75/442 revised by 2006/12/EC), Directive on hazardous wastes (91/689) and Water Framework Directive (2000/60/EC);
- Provisions of article 6 of the Habitats Directive if a Natura 2000 site is likely to be affected, and provisions of article 12 and 13 of the Habitats Directive if species listed in Annex IV of the Habitats directive are likely to be affected;
- Obligations as regards the activity of dumping/land filling: the marine dumping<sup>13</sup> conventions: 1972 London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention) and UN Law of the Sea Convention (LOSC); and the Landfill Directive 1999/31.

During the consultation and in particular in Lisbon stakeholders emphasised the need for legal security in respect of environmental requirements and for a simplification of those requirements.

#### **4.4.2. Policy Options**

4.4.2.1. Do nothing option. The market will have to adapt to the conditions imposed by environmental legislation. Environmental legislation already today provides mechanisms for taking into account projects of overriding economic interest when environmentally assessing the impact of new port developments or extensions.

#### 4.4.2.2. Legislative option

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<sup>13</sup> Dumping means any deliberate of waste or other matter from vessels.

a) The approval of the environmental impact assessment will have to take into account the environmental performance and the transport mode split. Modal shift to enhance sustainable transport (less polluting and therefore also reducing the impact on climate change) could be achieved by the following measures:

- Setting out a minimum rate of rail (plus inland waterway where possible) transport throughput in relation to total amount of cargo being moved by road as a condition to operate a terminal. This rate could be set in an yearly basis and a transitional period could also be established (i.e. 25 % by 2010 and 50 % by 2015).

b) Establishment of specific conditions/requirements determining port ability/capacity to move the cargo by rail or inland waterways as a condition to operate container and/or Ro-Ro terminals over a fix yearly throughput (i.e. 250,000 TEU or Ro-Ro units through a transitional period could also be applied or a higher threshold could be set out for a transitional period). These conditions would specifically refer to the following:

- The availability of direct rail connection from the rail yard of the rail network to the rail yard within the port terminal, without no road level crossing, with double track to secure service continuity, independent rail operator granted though a transparent and competitive procedure, etc.

- The guaranteed rail slots agreed with the rail infrastructure administrator to move a yearly fix number of trains per day (maybe on a weekly basis).

c) In order to resolve congestion on the road connections, impose the appropriate access fees when queuing indicators surpass a certain level agreed at Member States' level; the fees could be used for upgrading the rail connections.

d) Obligations to install capacity for the treatment of residues and restriction to operate linked to the production of residues.

4.4.2.3. Soft law option The Commission would issue a guidance document aimed at interpreting possible uncertainties related to the application of environmental legislation. Guidelines to promote the objectives set out under the legislative option (establishment of environmental monitoring systems).

### **4.4.3. Assessing the options**

In the do nothing option the market will have to adapt to the conditions imposed by environmental legislation. Environmental legislation already today provides mechanisms for taking into account projects of overriding economic interest when environmentally assessing the impact of new port developments or extensions. Based on a development of the existing mechanisms, the soft law option has been object of assessment. The objective is to achieve higher standards of environmental management in ports by means of a policy oriented toward guidance and support on the interpretation and application of environmental legislation and dissemination of best practice. The objective is also to provide guidance to port authorities on the interpretation of environmental legislation which sometimes might not be as clear as intended or transposed into national legislation in a way which differs from one Member State to another.

4.4.3.1. Scale of problem. Considerable progress has been made in recent years in environmental management systems in ports. However, not all ports have an environmental plan, environmental monitoring systems or designated environmental staff, and those that do are at different stages on the road to the ultimate goal as, for instance, environmental certification (i.e. ISO 14001 or EMAS). An analysis carried out on 42 ports in European market shows that 70% of port has started environmental initiative, but only 40% of ports have obtained a certification. Annex VI shows an overview of the principal environmental steps and their status in European ports.

Legal uncertainty was mainly claimed by stakeholders in relation to the Birds and Habitats Directives. The Commission is aware of the difficulties that may arise on the occasion of the implementation of these directives.

4.4.3.2. Scope for Change. Environmental standards in the port industry are improving on a semi-voluntary basis in response to public opinion, political pressure and more sophisticated corporate governance requirements. Progress is quite difficult to measure because of the range of different issues involved (noise, water pollution, waste management, protection of ecosystem and habitats, etc.). To quantify the impact of guidance on the interpretation and application of environmental legislation, it would be necessary to set a series of targets for the environmental improvements to be achieved in the next years, also on the basis of existing monitoring data, to make subjective estimates of the percentage and then to make subjective estimates of the percentage of ports likely to reach these targets with and without EU intervention.

The Commission has already published several guidance documents to support Member States in implementing the environment directives, and citizens and stakeholder in better understanding them. The Commission nevertheless intends to issue guidelines on the application of Community environment legislation to port development.

4.4.3.3. Costs. The cost of fulfilment of environmental standards is difficult to calculate, as it depends on the actual level of environmental compliance of each port, on the port size, on the environmental sectors involved. In several sectors (e.g. air pollution and noise pollution) environmental legislation is becoming stricter and more complex due to the adoption of lower limits for certain parameters, to the increased number of parameters to be controlled, and to the need for a more sophisticated monitoring. Compliance with environmental regulations is mandatory, already representing a cost for port authorities. In case the regulations are not complied with the cost (penalties, risks and hidden costs) may be even higher. Better organization of activities related to the environmental protection may represent a significant saving by allowing port authorities to avoid overlapping of monitoring activities, to plan investment related to environmental protection, to have a better relationship with public administrations, to prevent environmental accidents, to avoid penalties, etc. An air pollution monitoring system may have an investment cost in the order of € 100 k, with an operation cost of € 10 k per year; a wastewater treatment plants may have an investment cost of several million euros. The environmental impact assessment for the enlargement of an existing port may have a cost in the order of € 200 k to € 400k, the decontamination of contaminated sediment may cost up to € 1 k euros per cubic meter, etc. For a big port, the cost of environmental protection may certainly need a budget in the order of several hundred thousand to a million euros per year. The adoption of an environmental certification like the ISO 14000 may in turn have a cost that depends on the port size. Certification review includes fixed fees as royalties, certifying agent fees, applications, initial inspection and auditing. There is some suggestion that implementation and certification cost are estimated to range

from € 75 k to € 750 k euros for plant run buy a multinational corporation. Cost for small or medium size plants range between € 7.5 k to € 75 k depending on the company and individual needs and circumstance. However, the environmental certification is the basis for a better organization of the environmental protection activities, resulting in the medium or long term in saving that are several times bigger than the certification cost itself.

Considering the above, it is very likely that a policy aiming at providing guidance on the interpretation and application of environmental legislation may allow port authorities to save resources and money in the environmental protection, ensuring at the same time a better environmental management.

**4.4.3.4. Benefits.** The benefits of improved environmental standards obtainable by means of a policy oriented towards guidance and support on the interpretation and application of environmental legislation cannot be expressed in monetary terms. However, adhering to the environmental standards may result in better compliance with environmental regulations, greater marketability, better use of resources, higher quality of goods and services, increased use of safety, a better image and increased profits. The environmental awareness and documentation that are required, for instance, by ISO 14000 standards assist a company in conforming to environmental regulation, thus avoiding duplication and overlapping of environmental protection procedures, and reducing organization cost. The prevention of environmental accidents deriving from a better adoption of guidelines and environmental standards translates in a significant reduction of financial risk and possibly of insurance costs.

#### **4.4.4. Comparing the options**

The fulfilment of environmental regulations requires a sound technical capability within port authorities. As explained before, environmental conflicts in environmentally sensitive areas need the port authorities to adopt highly formalized procedures and to specifically dedicate to environmental protection.

Compliance with environmental protection regulation, which in any case is mandatory, may represent a significant proportion of the port budget. Therefore, sound planning and optimization of activities related to environmental protection are needed. A soft law solution is the best choice to achieve progress in terms of environmental standards and to try to harmonise economic and ecological objective, which have proved to be a difficult learning exercise for many ports, often resulting in conflicting situations.

The objective of providing guidance on the interpretation and application of environmental legislation is to achieve higher standards of environmental management in ports by means of a policy oriented toward the application of existing environmental legislation and the dissemination of best practice. Considerable progress has been made in environmental management systems in ports in recent years.

To quantify the impact of guidance on the interpretation and application of environmental legislation, it would be necessary to set a series of targets for the environmental improvements to be achieved in the next few years, then to make subjective estimates of the percentage of ports likely to reach these targets with and without EC intervention. Because large ports are more likely to reach the targets than small ones, the results could also be expressed in terms of

- the number of persons or the size of the area potentially benefiting from the improvement of the ports' environmental performance.

- the percentages of European cargo moving through compliant and non-compliant ports.

The following table summarises costs and benefits of an environmental certification.

Cost	Benefit
<ul style="list-style-type: none"> <li>▪ Operative costs: lower tolerance limits for certain environmental parameters, an increased number of parameters to be monitored and controlled, and to the need for more sophisticated monitoring;</li> <li>▪ Administration cost: fulfilment of environmental regulations is theoretically mandatory, already representing a cost for port authorities;</li> <li>▪ Equipment cost: for instance an air pollution monitoring system may have an investment cost of the order of hundred of thousands euros, with an operation cost of ten thousands euros per year;</li> <li>▪ Certification cost: the adoption of an environmental certification process like the ISO 14000 may in turn have a cost that depends on port size. Implementation and certification one-off costs are estimated to range from € 100 k to € 1 m for large ports. Costs for small or medium size ports range between €10 k and € 100 k depending on the company and individual needs and circumstance.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Adhering to strict environmental standards may result in <b>better compliance with environmental regulations</b>, greater marketability, better use of resources, higher quality of goods and services, increased use of safety, a better image and increased profits.</li> <li>▪ The environmental awareness and documentation that are required, for instance, by certification standards <b>assist a company in conforming to environmental regulation</b>, thus avoiding duplication and overlapping of environmental protection procedures, and reducing organization cost.</li> <li>▪ The prevention of environmental accidents deriving from a better adoption of guidelines and environmental standards translates into a significant <b>reduction of financial risk and possibly of insurance costs</b>.</li> <li>▪ Better organization of activities related to the environmental protection may represent a significant <b>saving by allowing the port authority to avoid overlapping of monitoring activities, to plan investment related to environmental protection, etc.</b></li> </ul>

#### 4.4.5. Choice of option

Legal uncertainty was claimed by stakeholders in relation to a number of environmental legislative acts, notably the Birds and Habitats Directives and their diverse transposition into national legislations. The Commission is aware of the difficulties that may arise on the occasion of the implementation of these Directives. Therefore, the soft law option is the preferred option.

#### 4.4.6. Conclusion

The Commission has already published several guidance documents to support Member States in implementing the environment Directives, and citizens and stakeholders in better understanding them. The Commission nevertheless intends to issue guidelines on the application of Community environmental legislation to port development.

### 4.5. Spatial Planning

#### 4.5.1. Introduction

This issue is an important one, even though it needs an approach other than the one described in the above chapters.

Transport flows across the Community can appear illogical or irrational in some cases. Freight is often shipped from ports located a thousand kilometres away, while there would be a port in the vicinity offering the same facilities. An example often mentioned during the consultation exercise (to be considered as such), is that the hinterland serviced by the North Sea ports extends down to Northern Italy. On the occasion of the workshop in Tallinn the Commission wondered in its discussion paper whether some form of "planning" for the transport flows would be advisable, or, at least, that the effects on the entire European transport chain of each port development should be assessed before the development is approved by the competent national authority.

The Tallinn workshop partially gave an explanation to the worries expressed by the Commission. Stakeholders pointed out that the choice of a given port is determined more by its reliability and hinterland connections than by its distance from the final recipient of freight. Such a choice will be probably influenced in the future by the way in which the use of infrastructure will be charged. But reliability and hinterland connections will remain essential anyway for the purpose of choosing ports.

#### **4.5.2. Policy Options**

4.5.2.1. Do nothing option. The market would continue "to find its way" to the end-users of the transport chain. The consequences of external cost and of the likely future tariffication of infrastructure would be integrated into the transport chain at the latest moment (when the use of land infrastructure has become so expensive that it is necessary to use the port closest to the final recipient).

4.5.2.2. Legislative option. Legal instruments already exist (TEN-T) for crossborder flows and infrastructures, including ports; any specific legislative option would be counterproductive in the current political atmosphere.

4.5.2.3. Recommendation. Some form of recommended policy could be introduced in the same soft law instrument that has been envisaged for the chapters above. It should also be emphasised that there is a clear connection between "spatial planning" for ports and the communication "Action Plan for Freight Logistics" which is being drafted by the services of DG TREN.

What could be recommended to Member States is that they carry out an impact assessment when they plan to develop one of their major ports. Such an assessment should be carried out at a European scale, taking into account the entire chain of transport and the effects on the use of land-infrastructure of the planned development. On the other hand, Member States should also assess the impact of their major land infrastructure development on transport flows affecting ports.

#### **4.5.3. Assessing the options**

In respect of spatial planning the "legislative option" is not available in practice. The recommendation option has been object of assessment. The primary objective regarding this issue is to analyse the routes taken by traffic flows from third countries to the European Union.

Transport flows across the EU can appear illogical or irrational in some cases. Freight is often shipped from ports located a thousand kilometres away, while there is a port in the vicinity



offering the same facilities. An example often mentioned during the consultation exercise is that the hinterland serviced by the North Sea ports extends down to Northern Italy.

The European port system as it stands now stems from historic developments. The higher efficiency of ports of the Northern range (Hamburg – Le Havre range) has captured traffics whose origin and/or final destination lies in far away hinterlands which, in turn, are located near less performing ports. The parameters of the use of the different transport modes are such that road transport is the preferred mode, carrying goods from Northern range ports to areas with less performing ports. However, this entails quantifiable environmental costs. The intention of the proposed alternative scenario is to show that the use of ports near to the origin and/or final destination of the goods allows for a reduction of the environmental costs but also of the price of transport in terms of a reduced cost per unit and shorter sailing times. There is no intention by the Commission to intervene in the spatial planning of port capacity or maritime routes.

In the current scenario for instance flows of goods between the Far East and Europe arrive in the ports of Northern Europe (e.g. Rotterdam, Antwerp, Hamburg) and are then delivered by trucks or rail to the final destinations (e.g. Central Europe but also France, Spain, Italy, etc).

**Map 1 Footprint of the current scenario**



This situation reflects a better level of service provided by ports in the Northern range and probably a lack of attractiveness in some Mediterranean ports. Ports in the Northern range are more efficient and reliable compared with ports in the Mediterranean; moreover they have more efficient and appropriate surface transport connections, are less congested and can process goods very quickly.; finally, the greater frequency of shipping services to Northern Europe, caused by its larger (local) base load traffic volumes, has allowed shipping lines to use larger ships, reduce costs; this has also resulted in more shipping lines entering the market, thus creating more competition.

In the medium or long run the development of port infrastructure, hinterland connections and transport networks could bring about a shift of goods flows from the Northern range to the

Mediterranean Area. The expected benefits of such a re-routing are the transport cost and time savings, and a reduction of external costs.

However the development of this alternative scenario depends on infrastructure investments. Feeder ports in the Mediterranean often have difficulties competing with those of Northern Europe because of inefficiencies affecting both their internal structure and inland transport. Moreover the growing mismatch between the demand for container shipping services and the supply of terminal capacity continues to be the main reason for observed schedule unreliability in liner services. Port congestion and associated decreases in schedule integrity affect the entire supply chain.

Following this hypothesis, one alternative scenario has been created as an example in which the flow of goods could be re-routed from the Northern range ports to Italian hubs<sup>14</sup> (e.g. Gioia Tauro and Taranto on account of their strategic position). In particular, containerized traffic from the Far East arrives at either Taranto or Gioia Tauro and is then moved to the final destination by trucks or rail after passing through feeder ports (e.g. Genoa, Trieste, Barcelona and Marseille).

The following map represents the Alternative Scenario.

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<sup>14</sup> Hubs are facilities that serve mainly transshipment traffic, functioning as connection centres between several origins and destinations. Hub ports act as sorting centres for container destinations that gravitate towards the Mediterranean. The crucial variable for choice between the two existing systems (direct origin/destination services and transshipment) is the handling cost at the hub port. Therefore, debate on the advantages of one system compared to the other shifts to the question of handling costs in hub ports. The organization of traffic according to hub & spokes systems otherwise allows a substantial reduction of unit transport costs for the main sea leg of the journey through the use of larger ships. Feeder Service: Cargo to/from regional ports is transferred to/from a central hub port for the long-haul ocean voyage.

**Map 2 Footprint of the “Alternative scenario”**



Map 2 shows the containerised traffic departing from the Far East, and arrives to Switzerland, Italy, Austria, Spain and France through Italian ports. In the following table are reported the “origin / destination” distances (expressed both in km for road and rail and in nautical miles for maritime transport) for both of the scenarios:

**Distances between Far East – origin/destination in the in the “do nothing scenario” (via Northern range ports) and in the “alternative scenario”**

Mode of transport	Scenario	Switzerland	Italy	Austria	Spain	France
Sea (nm)	Current	10.234	10.234	10.234	10.234	10.234
	Alternative	8.645	8.645	8.459	8.940	8.739
	<b>Difference</b>	<b>-18%</b>	<b>-18%</b>	<b>-17%</b>	<b>-16%</b>	<b>-16%</b>
Road (km) <sup>15</sup>	Current	614	950	975	1.650	579
	Alternative	239	142	354	618	505
	<b>Difference</b>	<b>-61%</b>	<b>-85%</b>	<b>-64%</b>	<b>-63%</b>	<b>-13%</b>
Rail (km) <sup>31</sup>	Current	594	925	990	1.545	560
	Alternative	239	140	350	600	500
	<b>Difference</b>	<b>-60%</b>	<b>-84%</b>	<b>-65%</b>	<b>-61%</b>	<b>-0,11%</b>

Source: PwC estimation on literature data

In order to establish the convenience of the alternative scenario the potential savings of external costs and transport costs has been calculated. First of all, the part of traffic volume (in tkm) that is directed toward the countries has been calculated. An analysis of unit transport

<sup>15</sup> In the alternative scenario, it has been hypothesized is that the containerized traffic has been sorted by road from the feeder ports to the final destination. We would have reached the same result in using rail instead of road.

costs for the three transport modes has been done. For the transport mode “sea” there is a difference between the costs to reach the Northern range and the ones to reach the Mediterranean countries. In the second case the costs related to the operations carried out in ports have been considered. The difference between the two parameters is due to the operational activities (i.e. loading, unloading, and mooring and so on) carried out in the hub ports.

**Table 2 Unit transport costs**

Transport mode	€ / '000 t*km
Sea (via Northern range ports)	0,0017
Sea (via Mediterranean Sea ports )	0,0022
Rail	0,043
Road	0,054

Source: PwC estimation (2007)

Finally, the analysis has considered the external costs. Transport externalities refer to a situation in which the transport user either does not pay for the full costs (e.g. including the environmental or congestion costs) of his transport activity or does not receive the full benefits from it. The air pollution externality from transport originates from the environmental impacts caused by emissions of air pollutants. In order to calculate the external costs of transport it is necessary to consider the amount related to the external environmental for sea, rail and road respectively, listed in the following table.

**External costs for sea, rail and road**

Transport mode	€ / '000 t*km
Sea <sup>16</sup>	5,2
Rail <sup>17</sup>	17,9
Road	71,2

Sources<sup>18</sup>: INFRAS/IWW, Ministry of Infrastructure and Transport

The following formula has been used to quantify the total cost of each scenario:

$$\text{Transport costs}^{19} = \sum_i uc_i^j \cdot tkm_i^j$$

Finally to quantify the benefits of the alternative scenario we have considered the difference between the total costs for both the scenarios, as shown in the following table:

<sup>16</sup> The external costs for sea include the following impacts: Air pollution, Climate change.

<sup>17</sup> For rail and road transport, external costs include the following impacts: Accidents, Noise, Air pollution, Climate change, Nature & landscape, Up- down stream, urban effects.

<sup>18</sup> Source for Rail and Road : INFRAS / IWW (Institut für Wirtschaftspolitik und Wirtschaftsforschung) “External cost of transport”; Sea: Ministry of Infrastructure and Transport of Italy – “Linee Guida per la stima dei costi esterni”;

<sup>19</sup> Where: uc=unit cost; j=transport mode; i=distance; t=timing

### Benefits in adopting the “alternative scenario”<sup>20</sup>

	External costs (€)	Transport costs (€)
Sea	-313.458.783	49.353.774
Road	-260.133.009	-170.315.229
Rail	-47.099.862	-106.983.638
Total	-620.691.654	-227.945.093
Tons	18.682.864	18.682.864
TEU <sup>21</sup>	1.868.286	1.868.286
Average saving per TEU	332	122

Source: PwC estimation

According to the analysis made by the consultant the results of the previous analysis can be summarized as follows:

- External costs are reduced by more than € 600 m per year;
- The average transport cost saving is € 122 for TEUs, following the itinerary given by the “alternative scenario” (benefits saving rate equal to 15% respect to € 834 TEUs of the Current Scenario);
- In terms of time saving, ship sailing time will be reduced by one week (4-5 days) with respect to the current situation.

In addition, the internalisation of external costs could be a way to influence transport costs and routes. However, the impact needs to be ascertained and will be object of further studies.

However, despite the advantage in terms of distance, the development of port infrastructure and hinterland connections has to be carried out. Today Mediterranean ports are unable to compete with those of Northern Europe due to inefficiency affecting both their internal structure and inland transport.

Investment to materialize the scenario concerns all different types of freight traffic (i.e. containers, bulk and Ro-Ro). This means a large scope of infrastructures, within and outside the port itself. The scenario assumes an optimization of freight flows which is not necessarily the result of an investment in infrastructures. Together with the improvement of capacity of infrastructures, it could be also necessary to activate incentives and a system of tolls and duties aimed at discouraging long-distance forwarding of freight by road.

<sup>20</sup> The alternative scenario considers as destination Switzerland, Spain, France, Italy and Austria

<sup>21</sup> TEUs have been calculated using an average weight of 10 tons per TEU.

Concerning infrastructures, investments within ports should encompass also taking into account the planned investments in the main Mediterranean ports:

- dedicated berths for Ro-Ro traffic (also encompassed in the Motorways of the Sea Master Planning);
- rail infrastructures on the quays, with efficient links to the backbone network.

In the hinterland of the ports, investments should focus on:

- improving logistic solutions;
- promoting the development of and smoothening the processes of intermodal transport.

Moreover, it must be stressed that the scenario as a whole encompasses the optimal use of the transport network, and thus investments could be necessary also in inland areas, not related with ports. As an example, the use of Spanish or Italian ports for serving central European origins/destinations, in place of the Northern Range ports, might need an improvement of the Pyrenees and Alps crossing, as well as the inland interconnection of single ports.

Accordingly, a quantification of the cost of the scenario is not possible within this impact assessment. Some results could be reached through a specific study, which should encompass a thorough transport network analysis.

It is necessary to highlight that any change in the choice of routes by intermodal transport operators will impact on specific business related company strategies, which could react, or not, to the policy.

There is a need to consider the current situation of inadequate port and freight transport capacity, as the demand for such capacity will continue to rise. Some possible solutions have been proposed by the affected stakeholders, such as the improvement of port terminals or maritime and land access to port terminals or the construction of intermodal and logistic platforms in port hinterlands and the creation of better linkages between different parts of the network.

#### **4.5.4. Comparing the options**

In the “do nothing scenario” for instance, flows of goods between the Far East and Central Europe arrive in the ports of Northern Europe and are then delivered by trucks or rail to their final destinations. This is due to the better level of service provided by ports in the Northern range (more efficient and appropriate surface transport connections, and less congestion than in Mediterranean ports).

In the medium or long run the development of port infrastructure, hinterland connections and transport networks could bring about a shift of these good flows from the Northern range to the Mediterranean Area ports.

Some possible solutions have been proposed by the affected stakeholders, such as the improvement of port terminals or the maritime and land access to port terminals, or the construction of logistic platforms in port hinterlands and the creation of better links within existing transport networks.

The primary objective is to improve the routing of traffic flows from third countries to the European Union.

The “alternative scenario” has been created as an example in which the goods flow could be re-routed from the Northern range Ports to an Italian hub. In this scenario containerized traffic from the Far East arrives at either Taranto or Gioia Tauro and is then sorted and moved to its final destination by trucks or rail after passing through feeder ports.

The reduction in external costs, transport costs, and time savings, underlines the advantages of the alternative scenario compared with the do nothing scenario. However, despite the advantages in terms of distance, the development of port infrastructure and hinterland connection has still to be carried out. As explained before, today ports of the Mediterranean area are unable to compete with those of Northern Europe on account of the inefficiency affecting both their internal structure and inland transport links. There is a need to consider the current situation of inadequate port and freight transport capacity as the demand for such capacity will continue to rise.

#### **4.5.5. Choice of option**

The Commission intends at this stage to follow the do nothing option and to leave this matter entirely to national and regional authorities.

#### **4.5.6. Conclusion**

The Commission intends to evaluate ports hinterland connections status and needs and their impact on a balanced network of traffic flows on the occasion of the mid-term review of the trans-European transport network in 2010.

### **4.6. Financial Autonomy, Transparency and Tariffs**

#### **4.6.1. Introduction**

This theme was dealt with in Hamburg, along with public funding (State aid). Public funding as such will not be addressed by the communication, since it will be covered by an ad hoc communication ("guidelines"). On the contrary, the related issues of financial autonomy of ports, transparency and tarification could be dealt with in the communication (probably with some references to the guidelines). Since the options regarding financial autonomy and tariffs on one part, and transparency on the other part are radically different, they will be treated separately in the present chapter.

#### **4.6.2. Financial autonomy and tariffs: policy options**

4.6.2.1. Do nothing. As indicated in the Discussion Paper for the Hamburg workshop, financial autonomy means in the present context that entities in charge of ports are capable of keeping with them their revenues, be they port dues or rents. Financial autonomy also implies that those entities enjoy a fairly discretionary power of using those revenues for investments. The opposite situation would imply that ports' revenues are transferred to another entity, e.g. the government, which also decide the amount of money to distribute to ports, irrespective of their revenues. Such a scenario was common many years ago, but it has gradually disappeared and still exists only in Italy, where it is being "cautiously" changed. If nothing is done at a European level, all Member States would very shortly reach full financial autonomy.

As for tariffs (or "dues" or "taxes", names change according to tradition and the legal regime for those fees), it was recognised by stakeholders in Hamburg that they are always publicly available (on the internet nowadays), although not always simple in their structure. As a matter of fact the real problem with tariffs is the "substance", i.e., the way in which they are calculated. It should be said from the outset in this field that there are neither common rules nor really harmonised practices. For this reason the considerations that follow may not be applicable in some Member States and/or in some ports. Shipowners are unhappy with the current tariffication based on tonnage (which is line with the conclusions of a study recently carried out for the Commission by AMRIE/ICL in November 2006). They claim that the system for tariffs should rather be based on the services needed by ships than by its size. Ports, in turn, take the view that a system entirely unconnected with size and tonnage would be unreasonable either. If nothing is done at a European level the method for calculating tariffs would probably stay the same for some time.

4.6.2.2. Legislative option. A European legislation could harmonise port tariffs and impose financial autonomy. Financial autonomy would be imposed, with the consequence that Member States less advanced in this process would have to accelerate it. As for tariffs, a directive could establish a uniform way for calculating dues (with standardised items), and probably set the principle (already in some documents of the Commission services a couple of years ago) that tariffs have to recover cost (which *per se* is matter different from harmonising port dues). Such a piece of legislation would strike the balance between the need of taking into account the tonnage and the size of the vessels and the one of charging shipowners for the services they actually use in ports.

4.6.2.3. Soft-law option. Choosing this option would imply issuing a recommendation on financial autonomy of ports or, most likely, including language recommending autonomy in a more general soft law instrument such as a communication on ports policy. As for tariffs, it could be envisaged that ports and shipowners start the process of seeking a solution that suit both. Possibly this solution could be included or referred to in a non-legislative instrument, such as a communication.

### **4.6.3. Transparency: policy options**

4.6.3.1. Do nothing. As explained in the Discussion Paper for Hamburg a general Community measure applies to relations between authorities and public undertakings: Commission Directive 2006/111. Under this directive Member States are required to ensure the transparency of financial relations between public authorities and undertakings which have benefited from public resources. As it has been clarified in Hamburg, Directive 2006/111 does apply to ports, even though in the case of ports in ownership or under a "dominant influence" of a public authority, the obligations set out in the directive only applies to ports whose turnover is more than 40 million Euros. A significant share of ports is therefore excluded from the scope of the directive which implies that small/medium ports could potentially be excluded for the Commission monitoring on public funding. This can generate distortions.

4.6.3.2. Legislative option. The Commission should amend Directive 2006/111 and establish that it applies to all ports irrespective of turnover.

4.6.3.3. Soft-law option. Unless the directive is voluntarily implemented (see point above), it could not become applicable to all ports by means of a communication or other soft law instrument, since the latter are not capable of amending a directive.



4.6.3.4. Voluntary option. Ports could agree on the full implementation of the directive also below its threshold. Transparency would be attained and the mentioned distortions avoided.

#### 4.6.4. Assessing the options

The do nothing option can generate distortions between ports above and ports below the threshold indicated in Directive 2006/111. The soft law option, e.g. a Communication, is not realistic since from the point of view of legal hierarchy as a Communication is not capable of amending a Directive. Therefore, the legislative option has been object of assessment. This policy option extends Directive 2006/111 on financial transparency<sup>22</sup> to ports with a turnover of less than € 40 m p.a. It could cover all ports, or simply ports above a new (lower) turnover threshold.

#### 4.6.5. Scale of problem

**The first step in the impact assessment has been to list all European ports** to which the transparency Directive applies (i.e. ports controlled by public authorities) in order to identify the number of European ports whose accounting practices would have to change as a result of the proposed EC legislation, and their share of European cargo and port turnover.

The analysis has been conducted on 350 European ports. Extensive research into passenger and cargo traffic data in 2005 has been conducted in respect of these ports. This has been done by reference to their web sites or - in some countries - national port statistics, or by e-mail requesting information about their turnover in the last financial year. For 25 of them it was possible to find figures about traffic and turnover for the same year. As far as the remaining ports are concerned, turnover has been obtained through linear regression analysis<sup>23</sup>.

Annex VII shows the data for ports for which turnover figures were available.

#### 4.6.6. Scope for change

The table below shows a summary of the ports that will be impacted if Directive 2006/111 on financial transparency is extended to ports with a turnover of less than € 40 m. Since the costs are proportional to the volume and complexity of the port's activity, as a first approximation the ports have been divided in three clusters depending on turnover:

- ports with a turnover < € 20 m

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<sup>22</sup> Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings. OJ L 318, 17.11.2006, p. 17.

<sup>23</sup> Linear regression is a statistical method used to analyze the relationship between a dependent variable Y, and independent variables X<sub>i</sub>, i = 1, ..., p. It can be used for example when two variables X and Y are known and one wants to find the best straight line through the data or, as in the case of this analysis, one uses the linear regression line as a standard curve to find new values of Y from X. In general, the goal of linear regression is to find the line that best predicts Y from X. Linear regression does this by finding the line that minimizes the sum of the squares of the vertical distances of the points from the line. Example of linear regression is the following:

$$Y = \beta_1 + \beta_2 X_2 + \dots + \beta_p X_p$$

Where  $\beta_1$  is the intercept ("constant" term), the  $\beta_2$  are the respective parameters of independent variables, and p is the number of parameters to be estimated in the linear regression.

- ports with turnover  $\geq$  € 20 m but  $<$  € 40 m
- ports with turnover  $\geq$  € 40 m

The Directive already applies to ports with a turnover greater than € 40 m, so there will be no impact on this cluster.

The following table shows the number of ports that would be impacted by the extension of the Directive, divided by turnover.

#### **Impacts according to ports' turnover**

<b>Turnover</b>	<b>Number of ports</b>	<b>Impact</b>
$\geq$ € 40 m	48	No
$\geq$ € 20 m but $<$ € 40 m	42	Yes
$<$ € 20 m	260	Yes

Source: PwC estimation

#### **4.6.7. Costs**

The cost of implementing new accounting practices for the ports involved has been done in three steps:

- identification of the number of ports impacted;
- definition of the type of costs;
- multiplication of unit costs by the numbers of ports affected, to provide a Europe-wide estimate of the additional accounting costs associated with the proposed change.

Step number two requires a definition of the costs of implementation. Due to the tight lapse of time to carry out the analysis the following figures represent a rough estimation of real costs to be expected. In particular, some relevant high value-added activities could have been left out that could impact seriously on the costs of some ports.

The table below shows the types of costs identified and their amount in relation to each cluster of ports.

#### **Summary of costs per cluster of ports**

Cost	Description	Turnover < € 20 m	€ 20 m ≤ Turnover < € 40 m
Consulting	Analysis of the “as is” scenario: <ul style="list-style-type: none"> <li>▪ financial accounting</li> <li>▪ controlling</li> </ul> Re-design of processes and procedures	Costs range between € 200 k and € 240 k	Costs range between € 400 k and € 480 k
IT	<ul style="list-style-type: none"> <li>▪ hardware (PC, server)</li> <li>▪ software (programmes)</li> </ul>	Costs for PC/Server = € 10 k Costs for B.I. SW <sup>24</sup> range between € 200 k and € 500 k	Costs for PC/Server = € 50 k Costs for B.I. SW <sup>25</sup> range between € 500 k and € 1 m
Training	Staff training	€ 20 k	20 k€
Total		Costs range between € 430 k and € 770 k	Costs range between € 970 k and € 1.55 m

Source: PwC estimation (2007)

Applying the costs above to the number of ports in the respective clusters it is possible to quantify global minimum and maximum costs.

**Table 0-1 Total amount of costs per cluster of ports**

Turnover	N° of ports	From a minimum cost of (k€)	To a maximum cost of (k€)
Turnover ≥ € 40 m	48	-	-
Turnover < € 20 m	260	111.800	200.200
Turnover ≥ € 20 m but < € 40m	42	40.740	65.100

Source: PwC estimation (2007)

#### 4.6.8. Benefits

The importance of transparency in port accounts has been clearly highlighted for the first time in the Green Paper<sup>26</sup>. Transparency is considered a key element for the effective and fair application of State aid provisions. The particular significance of the matter is apparent from the intensive debate that followed the Green Paper and that pushed the Commission to propose a study in the form of an inventory of financial practices, with the help and active involvement of Member States. This has collected information on public financing and charging practices in ports throughout the Community. The “Staff Working Document on Public Financing and Charging Practices in the Community Sea Port Sector” summarizes the results of this study and underlines that the financing of ports and maritime infrastructure and the policies on charging users vary noticeably from one country to another, reflecting the considerable differences in European ports’ ownership and organisation. Ports can be owned by the State, regional or local governments or by private enterprises and the ownership impacts on the type and accuracy of accounts and on their charging system.

<sup>24</sup> B.I. SW = Business Intelligence Software

<sup>25</sup> B.I. SW = Business Intelligence Software

<sup>26</sup> Green Paper on Sea Ports and Maritime Infrastructure COM (97) 678

According to the study this diversity of port structures impacts on the accounting systems employed in the Community port sector, that are not able to provide transparent and readily accessible information on the flows of public money into a port or between different organisational and managerial entities within a port.

But there is more to say about the advantages of implementing an efficient and effective accounting system. In the past ports were seen mainly as suppliers of services of general economic interest provided by the public sector and financed by the taxpayer, now they are more and more considered to be commercial entities which should recover their costs from the port users who benefit from them directly, therefore they have to be managed like private entities.

In this context, providing managers with a comprehensive system of information is fundamental to enable them to make informed business decisions and allow them to be better equipped in their management and control functions. In this context financial accounting and control systems are two key tools for managers. The first one is concerned with the preparation of financial statements for decision makers, such as stockholders, suppliers, banks, government agencies, owners, and other stakeholders, and is mainly focused on the past. The second one plays a crucial role in ensuring that plans are being implemented properly: its scope is to detect “errors” in order to take corrective action so that deviations from the stated goals of the organisation are removed in an orderly manner. To be effective, financial controls must be dynamic and run in parallel with the operating activity, in an iterative process that encompasses four phases: setting of the standards; measuring actual performance; comparing measured performance against established standards; taking of corrective action.

In an optimal situation, pricing policy should charge for the long-run marginal social costs of infrastructure use, encompassing capital, operating, environmental and congestion costs. In this way investments would be demand-driven and fair competition in the port sector in the longer term would be ensured.

Marginal cost pricing, whether financial or social, would result in most European ports going bankrupt because of their high level of fixed costs. It results in an economic distribution of traffic only in the short-term (by directing traffic to ports which have spare capacity and therefore very low marginal costs, rather than to busy ports which would have to invest in order to accommodate additional traffic). One way round this problem is to insist on long run marginal cost pricing, which also takes into account the costs of providing new investment.

#### **4.6.9. Comparing the options**

Transparency in public financial flows and in the pricing system in the Community ports sector is an essential tool to ensure a level playing field within and between ports. Given that the do nothing option can generate distortions and the soft law option is technically not capable of bringing about the desired effect, the preferred option is the legislative.

The idea is to extend Directive 2006/111 on financial transparency to ports with a turnover of less than €40m p.a. The first step in the impact assessment has been to identify the number of European ports whose accounting practices would have to change as a result of the proposed EC legislation, and their share of European cargo and port turnover.

Transparency in public financial flows and in the pricing system in the Community ports sector is an essential tool to ensure a level playing field within and between ports. Highlighted for the first time in the 1997 Green Paper, transparency is considered a key element for the effective and fair application of State aid provisions.

Finally, transparency in the accounting system means transparency of port charges.

#### **4.6.10. Choice of option**

Regarding financial autonomy and tariffs, the Commission will follow the do nothing option and, in line with the subsidiarity principle, leave the matter entirely to the competent national authorities. Nevertheless, the Commission insists on the need for more clarity on the different items that compose port tariffs, as well as on more transparency as for their relation with relevant cost.

Regarding transparency, the Commission will follow the legislative option, which is the only option to bring about the desired effect of creating a level-playing-field among port above and below the current threshold indicated in Directive 2006/111.

As for public financing, the Commission considers that setting a level-playing field between ports is necessary and will therefore follow the soft law option.

#### **4.6.11. Conclusion**

The Commission will help disseminating best practices on transparency in port tariffs.

The Commission plans to take measures towards extending the provisions on transparency of Directive 2006/111 to all merchant ports, irrespective of their annual turnover. This will allow for a complete picture of financial flows from Member States' public authorities to ports.

The Commission will adopt guidelines on State aid to ports.

### **4.7. Image of Ports**

#### **4.7.1. Introduction**

Ports often have a bad image with the general public, mainly because of their reputation of being ugly industrial areas, because of the risks for the neighbouring environment and the congestion they bring about. As underlined by a stakeholder in Tallinn, the image of ports is largely linked to what the port can offer to the local community in terms of jobs, economic development, and respect of the environment and of the landscape. There is certainly room for improving the image of ports, both with respect to the public in general and in relation to local communities. Recently, a debate on what have been called "soft-values" of ports has been launched. There is clearly an interest on stakeholders on this matter, even though such an interest is for the moment concentrated in the North Sea region.

#### **4.7.2. Policy Options**

4.7.2.1. Do Nothing Option. The image of ports and the relationship between the port and the local community would be left to a casual trend, mainly related to the local vicissitudes of each port.

4.7.2.2. Soft Law option. The Commission could envisage some non-legislative action, mainly aimed at spreading the best practice in this field. Actually there are ports which have started initiatives achieving an increased awareness by the general public of the role of ports in their cities, of their way of functioning and their history. The initiatives cannot be the same in all ports, nor can the expected results be the same. However, there is some added value in the idea of making the port and its activities better known, especially by local Communities. The Commission might help in disseminating those initiatives.

A matter which could be directly and effectively tackled by the Commission relates to security and to the implementation of Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security. In the course of the consultation some stakeholders have raised the matter of the compatibility of the port facilities being visited by the public – which is certainly one of the means to spread awareness about ports – and the provisions of the directive in question. On the occasion of a possible communication on ports, the Commission could provide its administrative interpretation of the relevant provisions.

Finally, Community funds might be used for the purpose of enhancing the image of ports, which is however a matter to be assessed on the basis of the different Community funding available.

4.7.2.3. Voluntary Option. The port industry and the local communities could take the initiatives they well deem appropriate in order to improve their relationship with ports. It should be noticed that initiatives taken in the framework of the "soft-law option" above can be complementary to the ones taken by the industry.

### **4.7.3. Choice of option**

Promoting the image of European ports is a subject to be mainly left to ports themselves, regions and Member States. However, the Commission will examine how to cooperate with and enhance co-operation between those authorities and stakeholders in order to improve the image of ports and the integration of ports with "their" cities. This can be done at the level of city planning, for example in terms of collective transport offer – but also by organizing port festivities, open days, or similar activities. We must try to reconcile port activity with culture, sea-related tourism and city-development at large. This process should also help better integrating ports into cities and city life.

Two specific matters relating to the relationship between ports and cities are especially relevant from a Community perspective: environment and security.

In fact, one of the reasons why ports are often criticized by the local community is their impact on congestion and the environment.

As for security, protection against terrorism and crime has made port areas much less accessible than a few years ago, so reducing the possibilities for the people to be in close contact with everyday's port business.

For the above reasons, the soft law option is preferred.

#### 4.7.4. Conclusion

The Commission has proposed in its Communication on Maritime Policy the enactment of a European maritime week. It wishes to further propose a European ports open day during that week which would give the occasion for the general public to assess, and understand better port community work. It will encourage Community funding instruments to offer support to improve the integration of ports with cities.

In the context of ongoing work on maritime and port security, the Commission suggests to assess the impact of security measures and provide guidance on how to reconcile the need for sound security measures and a fair degree of openness and accessibility to port areas.

### SECTION 5: SUMMARY OF OBJECTIVES AND IMPACTS, OPTIONS RETAINED AND EU ADDED VALUE

#### 5.1. Summary of objectives and impacts analysed by compared options:

Objectives and impacts	Option 1	Option 2	Option 3
Description of option	Do nothing	Legislative option	Soft Law
<i>Impact on new market access policy objectives</i>			
<i>Concessions</i>	-	+	++
<i>Work in Ports</i>	-	0	++
<i>Technical-nautical services</i>	-	+	+
<i>Economic impacts</i>			
<i>Environmental issues</i>	--	+	++
<i>Spatial planning</i>	0	n/a	+
<i>Financial transparency, autonomy and tariffs</i>	--	++	++
<i>Impact on other relevant Community policies</i>			
<i>Environment</i>	-	+	++
<i>Social</i>	-	+	++

++ = Significant positive impact

+ = Somewhat positive impact

0 = Neither positive nor negative/no change from present situation/unclear at this time

- = Somewhat negative impact

-- = Significant negative impact

n/a = Not applicable

## 5.2. Options recommended

The Commission considers that the most feasible actions are the following:

1. Interpretation of existing legislation, jurisprudence and Communications regarding their application to port concessions and technical-nautical services.
2. Encouragement of establishing a European sectoral social dialogue committee in ports within the meaning of Directive 98/500/EC. Propose a mutually recognizable framework on training to port workers. Close monitoring of the implementation in ports of Community rules on health and safety at work.
3. Propose to extend Directive 2006/111 on financial transparency to ports with a turnover of less than € 40 million p.a. Help disseminating best practice in transparency in port charges.
4. Propose soft law measures in the form of a guidance document to improve the environment and achieve a better balance between environmental concerns and economic growth.
5. Propose to evaluate port hinterland connections status and needs and their impact on a balanced network of traffic flows on the occasion of the TEN-T review.
6. Explore ways of promoting the image of ports. Provide guidance on how to reconcile the need for security measures and a fair degree of openness and accessibility to ports.

## 5.3. EU added value

The Communication on a European Ports Policy proposes for the first time an integrated approach to the various challenges confronting ports in the EU. The Communication will thus identify a series of actions at EU level that would constitute a coherent set of measures for the different policy areas over the years to come.

One of the issues at stake here is the freedom of establishment. This is coherent with the internal market policy. It is the Commission's role to apply the Treaty. Only action at EU level can regulate issues related to a European-wide level-playing-field concerning terminals and technical-nautical services. Member States would not do this spontaneously and would leave it to the particular circumstances in each port.

A further issue is ensuring a competition level-playing-field for all actors involved. Only action at EU level can ensure that the same coherent set of rules applies to port financing, State Aid and transparency across the EU.

As for work in ports, action at EU level encouraging and setting a formal framework for social dialogue can contribute to solving issues locally. A mutually recognizable framework on training of port workers would contribute to port workers' mobility across the EU. A European-wide monitoring of the implementation of Community rules on health and safety of workers can only be done by the Commission.

Concerning environmental issues, action at EU level providing guidance on the interpretation of environmental legislation would provide with the sector with a helpful tool in order to



better reconcile environmental protection and port development. This would further contribute to setting a level-playing-field in environmental questions.

Regarding spatial planning, the added value of action at EU level would consist in providing for financing in the framework of the trans-European transport networks for adequate port infrastructure and hinterland connections.

Action at EU level in the field of port image could give the sector a positive drive in order to bring the sector closer to the citizen. It could moreover clarify how to reconcile openness with security.

## **SECTION 6: MONITORING AND EVALUATION**

The Communication on a European Ports Policy will outline the actions the Commission will take regarding the different port-related policy fields. These actions will be deployed between 2008 and 2009 and will be accompanied, if necessary, by a specific Impact Assessment.

The analysis performed within the current assessment confirmed that one single solution cannot deal with all port-related issues. Rather, the solution is to be found in adopting a combination of measures some of which are intrinsically linked to one another. The Commission will ensure that the action plan is implemented within the given time frame and will continue to monitor the evolution of the situation of ports in Europe.

## **Annex I: Invited Stakeholder Associations**

The following stakeholder associations have been invited to participate in the workshops:

- Eurochambres
- European Association for Forwarding, Transport, Logistic and Customs Services – CLECAT
- European Transport Workers Federation – ETF
- European Boatmen's Association – EBA
- European Community Association of Ship Brokers and Agents – ECASBA
- European Community Shipowners' Association – ECSA
- European Maritime Pilots' Association – EMPA
- European Shippers' Council – ESC
- European Sea Ports Organisation – ESPO
- European Tugowners' Association – ETA
- European Federation of Inland Ports – EFIP
- Federation of European Private Port Operators – FEPORT
- Federation of European Tank Storage Associations – FETSA
- International Dockworkers' Council – IDC
- Business Europe (formerly UNICE)
- Union des stockeurs de céréales – Unistock/Coceral
- European Dredging Association – EuDA
- European Logistics Association – ELA
- Freight & Logistics Leaders Forum
- Community of European Railways – CER
- European Rail Infrastructure Managers – EIM
- European Railfreight Association – ERFA
- European Rail Freight Customer Platform – ERFCP
- Royal Society for the Protection of Birds
- Seas at Risk

**Annex II: Timetable consultation workshops**

<b>Time</b>	<b>Venue</b>	<b>Theme</b>
14-15 November 2006	Antwerp	<p><b>Port Services and Port Authorities</b></p> <p>The Port Administration: Organisational Structure of Port Authorities;</p> <p>The Port Services Market: Access to Port Land for the Provision of Services, Terminal Operations / Stevedoring Services, Technical-Nautical and Ancillary Services</p>
18-19 January 2007	Hamburg	<p><b>Port financing</b></p> <p>State Aid, Port Tarification, Financial autonomy of ports and transparency</p>
14-15 February 2007	Lisbon	<p><b>Sustainable development of port capacity, environmental issues, inter-port cooperation</b></p> <p>Sustainability of port industry, Effects on port activity and maintenance on the environment, Environmental port management, Port capacity, Inter-port cooperation</p>
8-9 March 2007	Valencia	<p><b>Labour Issues, Cargo-handling, Technical-nautical Services</b></p> <p>Stevedoring: Health and safety at work, training, market issues</p> <p>Technical-nautical Services</p>
19-20 April 2007	Naples	<p><b>Logistics, Hinterland Connections, Administrative Services</b></p> <p>Logistics: Organising a competitive and efficient transport network, Advanced information and communication systems, European e-maritime platform</p> <p>Hinterland Connections: Road, Rail, Inland Waterways, Loading units</p> <p>Administrative Services: Achievement of the internal market in maritime transport, Single window for all types of international voyages</p>
9-10 May 2007	Tallinn	<p><b>Relationship with non-EU ports, transport flows, image of ports</b></p>

## Annex III - Ports Policy Consultation

### Stakeholder positions

Stakeholder	Organisation of Port Authorities	Concessions	State Aid, Transparency, Tarification	Environment; Inter-port Cooperation	Labour	Technical-nautical services	Hinterland connections, Administrative Services	Competition, Image
<b>ESPO</b>	Historically grown, essential are the autonomy and keeping the public interest	<p>No new legislation; tendering should not be mandatory, not for all pieces of land; Clarify use by port authorities of instruments to influence and regulate market access for service providers;</p> <p>Clarify when a port authority can offer economic activities and services;</p> <p>Explain how mergers and take-overs in cargo handling</p>	<p>Need for guidelines on State Aid;</p> <p>No Community framework on port tariffs and recovery of cost; No need to reform 1969 Tonnage Convention as basis for calculation of port dues; tariffs are publicly available; extension of the scope transparency Directive to all ports covered by State Aid guidelines;</p>	<p>Need for guidance from COM on environmental legislation (Birds, Habitats and Water Framework) in line with ESPO "Code of Practice";</p> <p>Reinforce legal status of port development projects taking into account their qualification under TEN-T; Promote use of planning instruments at MS' level ensuring balance between economic, environmental and social objectives;</p> <p>Simplify existing environmental legislation (Birds, Habitats and Water</p>	<p>Social dialogue exists at local level already; at EU level only if relevant stakeholder organisations, including port authorities, agree on a common agenda; Compare systems of professional qualifications for port workers and consider system of mutual recognition; no need for sectoral legislation on health and</p>	<p>Need for rules on tech.-naut. services; are public services of general economic interest; port authorities should have control over tech.-naut. services</p>	<p>Implement existing policy and legislation in inland waterways and rail sectors; Revise TEN-T framework for stronger focus on hinterland connections to ports;</p> <p>Pursue and enforce existing initiatives to simplify customs procedures</p>	<p>action to be taken by COM at external relations and trade policy level; make an inventory of the existing problems; COM should take care of the image of ports by clarifying the rules on security and in the State aid guidelines ("soft value" infrastructure). COM should stimulate ports to take care of their image with local communities and</p>

Stakeholder	Organisation of Port Authorities	Concessions	State Aid, Transparency, Tarification	Environment; Inter-port Cooperation	Labour	Technical-nautical services	Hinterland connections, Administrative Services	Competition, Image
		market are compatible with Treaty rules		<p>Framework) and amendment proposals on air, water and waste;</p> <p>Encourage high European standards of environmental management; Support co-operation between ports on environmental management</p> <p>Bring time lag for port development down; no differential charging according to environmental performance of vessel;</p> <p>four possibilities for inter-port cooperation:</p> <p>defence of joint interests of Port Authorities, regional cooperation on a number of issues, developing common</p>	safety, enforce legislation; support training programmes			disseminate best practice. Ports & Cities primarily a task of the sector

Stakeholder	Organisation of Port Authorities	Concessions	State Aid, Transparency, Tarification	Environment; Inter-port Cooperation	Labour	Technical-nautical services	Hinterland connections, Administrative Services	Competition, Image
				strategies,  integration; TEN-T status of a project should be regarded as overriding public interest; encourage high standards for environmental management				
<b>FEPORT</b>	Structure not important; important is transparency of accounts	No new legislation; existing legislation should be applied; stable legal framework is already in place; legal certainty should not be compromised for existing terminal operators; port authorities should have flexibility to choose type of terminal operator, decide on means of	State Aid guidelines (soft law framework);  Port charging a matter for subsidiarity	re-examination of existing environmental legislation; need for cooperation between industry and environment;  assessment of economic impacts of environmental legislation, followed by binding dialogue leading to interpretation and/or revision of environmental legislation;  analyze low sulphur content of marine fuel; no opposition	Creation of structured social dialogue, restricted to social partners;  Existence of pools should not compromise the basic employer freedom to choose its own personnel;  Health and safety: differences on implementatio	[issue not addressed]	simplify administrative procedures	Some competition from third countries exists, where, however, Commission has limited tools to intervene. Central planning or routing should be avoided. Also preferential or compensating financing should be avoided.

Stakeholder	Organisation of Port Authorities	Concessions	State Aid, Transparency, Tarification	Environment; Inter-port Cooperation	Labour	Technical-nautical services	Hinterland connections, Administrative Services	Competition, Image
		choosing terminal operator, prolong concessions, renegotiate contracts, assess expansions		between economy and environment	n of common rules have a reason of existence.			
<b>EFIP</b>	Inappropriate to consider inland ports in the Communication  Privatization is an issue, especially if reaffected of assets from port activity to recreational / housing	[issue not addressed]	Exclusion of inland ports from State Aid guidelines for ports;  Specific State Aid guidelines for inland navigation  Tariffs: no action at EU level	environmental development and planning are important for inland ports; not the environmental legislation is a problem, but its interpretation;  Development of guidance instruments for seaports, inland ports and inland waterways for Birds, Habitats, Water Framework, Waste Directives and for dredging and pollution issues; re-assessment or revision of environmental	Support actions to promote the sector in order to encourage and attract people to the port sector	[issue not addressed]	Realisation of TENT-T network should be speeded up  Pay increased attention to hinterland connections of ports in TEN-T and other funding programmes  Ensure implementation of Naiades Action Programme  Ensure further development of rail sector	Support improvement of image of inland ports; inland ports are urban ports  Disseminate best practice and results of EU funded projects: Bestufs, Civitas, Marco Polo, Interreg  Elaborate funding handbook, as in Naiades  Assess socio-economic impact of

Stakeholder	Organisation of Port Authorities	Concessions	State Aid, Transparency, Tarification	Environment; Inter-port Cooperation	Labour	Technical-nautical services	Hinterland connections, Administrative Services	Competition, Image
				<p>legislation</p> <p>COM as a catalyst for dissemination of initiatives on environmental management</p> <p>Regret change of wording from "modal shift" towards "comodality".</p> <p>Inter-port cooperation COM to encourage dissemination of best practice</p>			<p>Address issue of bottlenecks</p> <p>Consider new financial tools and models for infrastructure development</p> <p>Reduce administrative burden</p>	<p>inland ports at EU level</p> <p>Encourage awareness building and urban/spatial planning solutions at local level</p>
<b>ECSA</b>	<p>Organisational setup not important; no need for common European model for port management;</p> <p>important elements are: competition, clarification of the public service element,</p>	<p>There should be choice and competition in ports, whether through tendering or not does not matter.</p> <p>If there is a limitation a normal system of tenders / concessions should apply.</p>	<p>Tariffs should be transparent, relevant and freely negotiable; no EU structure of port tariffs needed;</p> <p>issue State Aid guidelines, reference to the 2002 Vademecum; locks to be moved to category 1 basic infrastructure,</p>	<p>Investments in ports and hinterland connections are a clear priority; a fair balance between environmental concerns and port developments has to be established</p> <p>Habitats/Birds Directives to be clarified and amended; get the best from existing</p>	<p>Respect freedom of service providers to engage personnel of own choice;</p> <p>cargo handling should be subject to normal market conditions and competition.</p>	<p>technical-nautical services of pilotage, towage and mooring are not public services, although there are safety implications;</p>	<p>TEN-T should give priority to port hinterland connections;</p> <p>Enhance liberalisation of rail cargo services;</p> <p>Implement Naiades Action Programme;</p>	<p>Ports to constantly improve efficiency adapt to changing circumstances and look for innovation.</p> <p>EU aid should not distort competition for EU ports.</p>



Stakeholder	Organisation of Port Authorities	Concessions	State Aid, Transparency, Tarification	Environment; Inter-port Cooperation	Labour	Technical- nautical services	Hinterland connections, Administrative Services	Competition, Image
	transparency of functions and separate accounts by functions; some public tasks are performed by private operators (immigration, security)	A kind of such a system exists in most ports. It should be fair, transparent and relevant;  Concessions should be long enough to return capital; Soft law preferred.	Transparency on financial relations necessary	capacity by increasing efficiency; emissions in ports are normal, they do not only come from ships but also from other industries	Assess existing arrangements against EU legislation;  proper qualification essential criteria to be left to national authorities;  users of ports and port services to be involved in social dialogue on policy issues;  need to pursue mutual recognition of training qualification for port workers and free movement of workers	safety should not be abused for protection- nist measures, a contestable safety risk assessment is essential;  no need for pilots to be trained captains on seagoing vessels;  English should be examination language;  open access for competitors in towage	Pursue bottleneck exercise;  Customs procedures for transport of intra-EU goods by SSS to be reduced at same level as overland transport	Perception of ports and shipping to be improved

Stakeholder	Organisation of Port Authorities	Concessions	State Aid, Transparency, Tarification	Environment; Inter-port Cooperation	Labour	Technical-nautical services	Hinterland connections, Administrative Services	Competition, Image
						services;  Technological progress to be enhanced.		
<b>EMPA</b>	Competent authority controlling pilotage should be Government, not port authorities	[issue not addressed]	State Aid guidelines  Tariffs are easily available to the public	Priority is no longer given to nautical aspects regarding the local prevailing wind and current conditions but to the possible environmental impact when assessing environmental impacts;  Consider impacts made by ever growing ships: congestion (also for inland barges), additional dredging, smaller tidal windows	Some health and safety risks for pilots due to incorrect handling of material by ship crews	No market failure in access to TNS; strongly opposed to introduce intra-market competition for pilotage;  There is a level-playing-field in pilotage; it is a public service; generalising the use of English is not realistic,	Development of e-navigation rests primarily with IMO, but harmonise e-navigation and e-maritime for their compatibility;  For inter-EU trade: reduce administrative procedures to the same level as road transport.  For all maritime trade: harmonisation of forms and procedures for all EU ports, reduce	no central planning' by the Community of ports or compulsory routing schemes, also not in relation to competition from 3 <sup>rd</sup> country ports;  Image: no need for Community intervention

Stakeholder	Organisation of Port Authorities	Concessions	State Aid, Transparency, Tarification	Environment; Inter-port Cooperation	Labour	Technical-nautical services	Hinterland connections, Administrative Services	Competition, Image
						pilotage is very much a local business	administrative burden, i.e. customs, immigration, environment, health,  single window concept, share information amongst VTS, port, pilot services, other port services, agents	
<b>ETA</b>	Important for transparency and equal access	Concessions should be based on the life expectancy of the equipment to be employed	[issue not addressed]	[issue not addressed]	[issue not addressed]	Are not public service provider but commercial service with public service elements	[issue not addressed]	[issue not addressed]
<b>EBA</b>	Need for strong public port authorities	the competitive approach lies in either access or provision of services	[issue not addressed]	introduce environmental requirements for tendering of pilotage, towage and mooring	[issue not addressed]	is no need for harmonisation at EU level on rules	[issue not addressed]	[issue not addressed]

Stakeholder	Organisation of Port Authorities	Concessions	State Aid, Transparency, Tarification	Environment; Inter-port Cooperation	Labour	Technical- nautical services	Hinterland connections, Administrative Services	Competition, Image
						regarding market access for mooring; mooring is a service of general economic interest		
<b>ECASBA</b>	The role of the port authority as a guarantor of equal access opportunities and fair competition within the port must also apply to its role as a representative of the various government agencies	market access to service providers, the procedures establishing, calling for and awarding tenders must of course be totally transparent and non-discriminatory	State Aid guidelines;  No regulation on tariffs;  Transparency Directive already in place	all planning scrutinised quickly  framework → public enquiry stage  trade through existing ports/new ports – EC pan-european	support the provision of training for all sectors of the port industry ;  abandon restrictive practices and adopt the social dialogue	Monopolistic towage and pilotage services; ports policy should provide (1) a framework to allow ports to develop to match trade requirements, (2) efficient and appropriate surface transport	Rail must be supported;  imbalance between the administrative compliance requirements for intra-EU maritime traffic and road or rail is a major disincentive for SSS;  Common E. M. space: same regulatory uses as for inland navigation; doubts about the proposals that the MarNIS	Specific aid to ports subject to 3 <sup>rd</sup> country competition would entail distortion of competition with other European ports;  Awareness of sea advantage  SSS activity = city centre

Stakeholder	Organisation of Port Authorities	Concessions	State Aid, Transparency, Tarification	Environment; Inter-port Cooperation	Labour	Technical- nautical services	Hinterland connections, Administrative Services	Competition, Image
						and (3) easy 24/7 access to the port for agents, as well as for other ships suppliers/c ontractors; compulsory use of English for towage and pilotage operations	project takes over the role of the agent in the exchange of information between the ship and the shore	
<b>ETF</b>	No imposition of a particular model of port organisation	Guidelines on market access for more market transparency;  Concern about tendering, because of the question of continuity of workers	State Aid guidelines	Promote sustainable development;  do not expect COM to draw a geographic map, but COM's role is to look at the public interest and at sustainable solutions	Introduce standardized health and safety rules for ports;  Strategy to improve health and safety at work with focus on education and training, dissemination of a prevention culture,	[issue not addressed]	Simplify administrative procedures, put in place a Common European Maritime Space	Promote public image of ports through "best practice" and "added value" of ports to local communities

Stakeholder	Organisation of Port Authorities	Concessions	State Aid, Transparency, Tarification	Environment; Inter-port Cooperation	Labour	Technical-nautical services	Hinterland connections, Administrative Services	Competition, Image
					<p>improvement of risk assessment procedures;</p> <p>Pools created for the benefit of workers not of employers; sufficient legislation on access and competition; promote social dialogue for port workers; in Germany social dialogue for ports works, this model should be extended to Europe; need for specific safety rules for port workers; ratification by Member States of ILO Conventions 137 and 152; no need for</p>			

Stakeholder	Organisation of Port Authorities	Concessions	State Aid, Transparency, Tarification	Environment; Inter-port Cooperation	Labour	Technical-nautical services	Hinterland connections, Administrative Services	Competition, Image
					mutual recognition			
<b>IDC</b>	Support and strengthen the independent role of port authorities	Concern about tendering, because of the question of continuity of workers	Design and implement tools and measures to guarantee transparency in port management	Environmental matters not to be ignored; Organise workshops under auspices of TREN and ENV with stakeholders; COM to take initiative of promoting with stakeholders an examination of environmental quality of port areas (air, water, noise, waste, safety and security of goods);  No centralized port planning	Implement formal social dialogue;  Create certification system with minimum standards to join the profession; need for clear rules on access to profession; design specific professional occupational training programmes for dockworkers; European funding;  Health and safety: implement a European code for the prevention of	[issue not addressed]	Concentrate in "one stop shop" all administrative procedures  Encourage e-maritime	No EU funding for competing non-EU ports,  Ready to participate in improving image of ports

Stakeholder	Organisation of Port Authorities	Concessions	State Aid, Transparency, Tarification	Environment; Inter-port Cooperation	Labour	Technical-nautical services	Hinterland connections, Administrative Services	Competition, Image
					<p>occupational hazards in ports</p> <p>Pools not created for the benefit of workers but of employers; need for protection of workers' rights in the event of tender procedure leading to a new terminal operator; harmonisation at European level of professional requirements for dockers; promote safety culture and training; need for proper monitoring of accidents; Ratification of ILO 137</p>			



Stakeholder	Organisation of Port Authorities	Concessions	State Aid, Transparency, Tarification	Environment; Inter-port Cooperation	Labour	Technical- nautical services	Hinterland connections, Administrative Services	Competition, Image
ESC	[issue not addressed]	investigation is required into the likely impact from limits of competition within and between EU ports on service performance, productivity and charges imposed on shippers; Loosing a concession would lead to social unrest, the solution being to take over the existing workforce	State Aid guidelines;  Port accounts should be made more transparent in order to verify that individual port charges are not unreasonable and reflect the services used by individual port users tariffs are publicly available but not clear at all	need for additional port capacity; risk of spatial planning "from Brussels"; need for optimising existing port capacity before planning new one; Cooperation between ports	Restrictive labour practices within ports can cause significant delays and costs; Ports policy should focus on removing bureaucracy, removing restrictive labour practices, encouraging more investments in transport infrastructure, facilitating communication initiatives	[issue not addressed]	Shippers have no influence on hubs or the size of the container vessels; shippers have to go where the carrier takes them. Carriers will favour ports with better hinterland connections, ports which are less congested;  help port and terminal operators and other industry stakeholders become more aware of bottlenecks and their causes; help introduce simplified documentary and data submission procedures; assisting	Generalisation and perception of non-EU ports is irrelevant to a sustainable EU ports policy;  EU ports policy should seek to increase the awareness of port activities and issues affecting them among the wider public and industry

Stakeholder	Organisation of Port Authorities	Concessions	State Aid, Transparency, Tarification	Environment; Inter-port Cooperation	Labour	Technical-nautical services	Hinterland connections, Administrative Services	Competition, Image
							industry stakeholders seek solutions to removal of bottlenecks	
CLECAT	Logistics needs competition within the port and between ports	assessment of relevant EU legislation and the establishment of a framework through guidelines; tender procedures would provide the best solution to ensure non-discriminatory access to the operation of port facilities; duration of authorisations; long enough to encourage investments, i.e. to allow a proper return; authorisations' duration should	Logistics needs clear and effective State Aid guidelines  The merits of a categorisation should be carefully assessed and clearly visible before starting such discussions	Logistics needs port infrastructures  Need for identification of the "hidden" capacity not used  avoid a concentration of traffic at a few major ports; port development must occur harmoniously all over the EU territory; Legal certainty: harmonisation as regards the competence for evaluating environmental effects of a project and/or the possibility to appeal a decision	[issue not addressed]	[issue not addressed]	infrastructure charging policies; keeping a level playing field among the various modes that will provide hinterland connections; very supportive of the administrative simplification that may be brought about by the implementation of the Common European Maritime Space; no objection to single window concept; develop e-maritime	sympathise with the difficulties faced by some EU ports as regards "unfair" competition from non-EU seaports; international demarches' discussions between the EU and non-EU countries concerned could be worthwhile, in particular in the context of EU neighbourhood policy.

Stakeholder	Organisation of Port Authorities	Concessions	State Aid, Transparency, Tarification	Environment; Inter-port Cooperation	Labour	Technical-nautical services	Hinterland connections, Administrative Services	Competition, Image
		not become a hidden means of preventing competition; full and fair inter-port & intra-port competition would provide the best level of transparency for port tariffs					platform	
<b>European Dredgeing Association (EuDA)</b>	[issue not addressed]	[issue not addressed]	[issue not addressed]	Specific guidance from COM to national authorities; no stronger role of COM on dredged material; EU legislation sometimes applied to dredged material that should not be because it is overruled by international law;  COM to accept EP's opinion that sediment and silt which do not feature hazardous products	[issue not addressed]	[issue not addressed]	[issue not addressed]	[issue not addressed]

Stakeholder	Organisation of Port Authorities	Concessions	State Aid, Transparency, Tarification	Environment; Inter-port Cooperation	Labour	Technical-nautical services	Hinterland connections, Administrative Services	Competition, Image
Eurochambres	Respect diversity of European ports	Ensure fair competition between ports	State Aid guidelines  No need to differentiate between ports	need for more legal certainty and that more guidance from the COM;  Recast or re-examination of existing environmental legislation	[issue not addressed]	TNS are commercial services, no action at EU level required	Port capacity increase and development of hinterland connections a matter for port authorities, markets and Member States  Simplify customs procedures in intra-EU maritime transport	Competition: make EU ports more competitive through rigorous application of Treaty provisions and negotiate with non-EU States in external relations and trade policies;  Sector should improve itself public perception of ports; COM to acknowledge some problems caused by EU legislation; COM to encourage exchange of best practices

Stakeholder	Organisation of Port Authorities	Concessions	State Aid, Transparency, Tarification	Environment; Inter-port Cooperation	Labour	Technical- nautical services	Hinterland connections, Administrative Services	Competition, Image
<b>Royal Society for the Protection of Birds (RSPB)</b>	[issue not addressed]	[issue not addressed]	[issue not addressed]	<p>Need for an early integration of environmental issues in port development planning at strategic and project levels; long-term planning of new port capacity, road and rail infrastructure in time, take into account modal shift and effects on CO2 emissions.</p> <p>Determine capacity for non-damaging growth and means to “incentivise” productivity.</p> <p>Reduce impacts on Natura 2000 sites through greater productivity and avoiding impacts.</p> <p>Where impacts unavoidable integrate planning for mitigation and, if necessary, compensation measures into</p>	[issue not addressed]	[issue not addressed]	[issue not addressed]	[issue not addressed]

<b>Stakeholder</b>	<b>Organisation of Port Authorities</b>	<b>Concessions</b>	<b>State Aid, Transparency, Tarification</b>	<b>Environment; Inter-port Cooperation</b>	<b>Labour</b>	<b>Technical-nautical services</b>	<b>Hinterland connections, Administrative Services</b>	<b>Competition, Image</b>
				strategic and project level planning.				
<b>Seas at Risk</b>	[issue not addressed]	[issue not addressed]	[issue not addressed]	environmental issues are not only nature protection but also geographical distribution of ports and modal shift towards the hinterland	[issue not addressed]	[issue not addressed]	[issue not addressed]	[issue not addressed]
<b>IRU</b>	[issue not addressed]	[issue not addressed]	[issue not addressed]	[issue not addressed]	[issue not addressed]	[issue not addressed]	Road needs good access, interoperable port access cards, flexible opening times, safe and secure parking, sufficient storage space for transported goods, limits to bulk breaking and flexible shunting equipment.	[issue not addressed]

Stakeholder	Organisation of Port Authorities	Concessions	State Aid, Transparency, Tarification	Environment; Inter-port Cooperation	Labour	Technical-nautical services	Hinterland connections, Administrative Services	Competition, Image
<b>Zentral-Verband Deutscher Seehafenbetriebe (ZDS)</b>	Port authorities should be entitled to choose autonomously which service provider (profile, potential and market position) they prefer to contract to the benefit of the strategic port development	Content of contracts, their durations, level of efficiency and any warranties should be freely negotiable by port authority. Contracts should be open to prolongation, in particular during their initial duration in case of important investments. Conclusion of expansion contracts with existing operators should be possible. Option of public tendering of land to be let should only be considered as one of the available options.	COM should issue State Aid guidelines with sector specific de minimis rules; only applicable to new financing decisions	[issue not addressed]	No general legislation on pools for temporary dockers by COM, rather – where applicable – case by case decisions. Use of pools for temporary dockers where such pools are based on and build according to national legislation, without confinement of the liberty of employers to hire personnel of their own choice.	[issue not addressed]	[issue not addressed]	[issue not addressed]

Stakeholder	Organisation of Port Authorities	Concessions	State Aid, Transparency, Tarification	Environment; Inter-port Cooperation	Labour	Technical-nautical services	Hinterland connections, Administrative Services	Competition, Image
<b>Federation of European Tank Storage Associations (FETSA)</b>	Taxonomy of European port sector too ambitious to establish	Existing body of legislation, properly explained, understood and applied, is sufficient to ensure conditions for port sector. Concessions to be viewed in the light of the long term perspective that some highly capital intensive operators require, also in view of the need to be prepared to invest year after year to keep their installations up to date with the ever increasing demands regarding environment, occupational and environmental	Tarification is a matter for business	Need for identification of unnecessary overlaps, conflicting rules, unexplainable and unjustifiable requirements (e.g. dredging and waste), "trim the trees and dig out the weed"	Little to complain about	Little to complain about	Create more common understanding and a unified practice among competent authorities; single window approach	Relax rules or compensation for better business conditions or seduce other party to behave differently



Stakeholder	Organisation of Port Authorities	Concessions	State Aid, Transparency, Tarification	Environment; Inter-port Cooperation	Labour	Technical-nautical services	Hinterland connections, Administrative Services	Competition, Image
		safety, security, hazard control.						
<b>Flemish Ports</b>	"One size fits all approach" not feasible	No further COM action needed;  No general obligation of tender procedures, selection on the basis of good governance; COM Communication of 29.04.2000 is enough	State Aid guidelines  Financing regulation of Flemish ports as "best practice";  Tariffs must be easily consultable by users, clarity on discounts	Clear and unambiguous European environmental legislation;  Ship emission rules compatible with IMO  Dredging material is not waste;  General introduction of shore-site electricity not feasible;  Cooperation and complementarity imposed from above not wanted	Minimum standards for health and safety and their enforcement;  Training to be left to MS; self-handling unacceptable	Not for EU to decide who perform TNS; TNS are services of general economic interest	No EU influence of the flow of goods;  Internalisation of external costs  Co-modality is one of the objectives;  Stimulate harmonisation of single windows; Inventory of existing systems	Competition is limited problem; no EU measures;  Image initiatives to be organised by port authorities; EU funding desirable, even requiring cooperation among port authorities

Stakeholder	Organisation of Port Authorities	Concessions	State Aid, Transparency, Tarification	Environment; Inter-port Cooperation	Labour	Technical-nautical services	Hinterland connections, Administrative Services	Competition, Image
<b>Business-europe (formerly UNICE)</b>	One-size fits all approach not feasible	Any European Ports Policy needs a wider perspective than just that of the provision of ports services	A constructive debate on State aid financing versus private financing and/or public-private partnerships is needed	Planning for future capacity of ports is becoming a huge problem for ports.	[issue not addressed]	Use of a common ports language; facilitate obtention of PECs	ports as a competitive part in a competitive supply chain for Europe;  promote R&D and innovation;  promote standardization;  simplify procedures;  Investment in terminal and handling facilities (e.g. docking capabilities, better technology, facilities linking ports to road/rail/inland waterway networks etc.) need to be increased in able to facilitate the efficient passage	[issue not addressed]

Stakeholder	Organisation of Port Authorities	Concessions	State Aid, Transparency, Tarification	Environment; Inter-port Cooperation	Labour	Technical-nautical services	Hinterland connections, Administrative Services	Competition, Image
							of cargo through ports	
<b>Port of Gijón Spain</b>	<p>Develop a European map of port competences to know which capacities has every port interlocutor in the different countries;</p> <p>Fully support the ESPO concept of Port Management Body, to describe any entity who is taking care of the port's administration, and would include port authorities, port administrations, port companies and port societies</p>	The concept of "port-competition" is not describing the real market situation, the true competition is between intermodal chains including ports, but also including land transport services	State Aid guidelines for port investments in both expansion projects and operation services should be developed with common rules for all EU ports	<p>There are 5 subjects identified as key for implementing port environment policy :</p> <p>1- Port industry sustainability</p> <p>2- Port activities impact on environment</p> <p>3- Management of port environment</p> <p>4- Port capacity</p> <p>5- Interport cooperation.</p> <p>We consider there is missing one issue:</p> <p>port safety &amp; security, a basic issue in any port environmental integrated approach.</p>	<p>is not clear that an European-wide regulation regarding port labour services would be efficient for all countries;</p> <p>A general European framework, but a specific national customized approach could be best</p>	<p>A TNS map of competencies should be devised showing the different systems used in Europe, in order to identify who are the service providers in each case</p>	<p>- e-navigation</p> <p>- e-maritime</p> <p>- e-transport</p> <p>- e-booking</p> <p>e-concepts are not standardised</p>	cooperation and competition = cooperation; A level playing field should be defined

Stakeholder	Organisation of Port Authorities	Concessions	State Aid, Transparency, Tarification	Environment; Inter-port Cooperation	Labour	Technical- nautical services	Hinterland connections, Administrative Services	Competition, Image
Unistock	[issue not addressed]	<p>Concessions are fully transparent</p> <p>Decentralised administration negatively affects efficiency</p> <p>There is positive discrimination from port authorities to newcomers</p>	<p>Rail, road and quay equipment in port areas should be considered infrastructure and not superstructure</p> <p>Maintain principle of public financing of infrastructure (e.g. waterways)</p> <p>Transparency in new investments is crucial</p> <p>Long-term lease contracts, ideally indeterminate, minimum 50 years</p> <p>More transparency on public funding criteria</p> <p>Transparency of tariffs is available, information on discounts often not</p> <p>GT not the best criterion for</p>	<p>Take into account environmental benefits of ports; contributes to promoting SSS and modal shift</p> <p>Disproportionate and costly environmental constrains</p> <p>Uniform application of environmental legislation</p> <p>Doubts about COM guidance: would lead to reinforcing environmental priorities</p> <p>Markets should be left to act; COM not to propose recommendations on best environmental practice or inter-port cooperation</p> <p>No policies aiming at port concentration or at creating reserve</p>	<p>No need for COM action on training, but promote mutual recognition of training certificates allows mobility of workers</p> <p>No compulsory permanent cargo-handling services (24/7)</p> <p>Monopolies for recruitment of port workers no longer justified</p>	<p>Mandatory use of TNS justified for safety reasons</p> <p>More competition welcome; mandatory tenders through common rules</p>	[issue not addressed]	[issue not addressed]

Stakeholder	Organisation of Port Authorities	Concessions	State Aid, Transparency, Tarification	Environment; Inter-port Cooperation	Labour	Technical-nautical services	Hinterland connections, Administrative Services	Competition, Image
			calculating port dues, but simplest; it should remain	port capacity				

## Annex IV: Management structure in European ports

Member State	Description
Belgium	<p>The ports of Ostend, Ghent and Antwerp have the status of autonomous municipal companies. The port of Zeebrugge is a limited company.</p> <p>The 1999 “Port Decree” is the basis of Flanders’ ports policy. It provides regulations and conditions which should lead to:</p> <ul style="list-style-type: none"> <li>▪ acquisition of more autonomy with regard to management and operation;</li> <li>▪ acquisition of a legal identity by each port;</li> <li>▪ uniform working conditions for all ports;</li> <li>▪ a clear and transparent relation between the ports and between the ports and the Flemish government.</li> </ul>
Cyprus	<p>Cyprus Ports Authority is a semi-governmental autonomous organisation with following tasks:</p> <ul style="list-style-type: none"> <li>▪ administration and exploitation of the ports,</li> <li>▪ development, maintenance and operation of the ports,</li> <li>▪ provision of port infrastructure, equipment and services.</li> </ul>
Denmark	<p>There are six principal types of ports:</p> <ul style="list-style-type: none"> <li>▪ public municipally governed ports (the port is part of the city and its activities),</li> <li>▪ independent public municipally governed ports (economically independent and autonomous public bodies, directly responsible to the City Council with a Harbour Board entrusted with the immediate administration of the port;</li> <li>▪ limited companies owned wholly or partly by a local authority;</li> <li>▪ state ports;</li> <li>▪ privately owned ports;</li> <li>▪ the Port of Copenhagen, belonging to the State, instead of being autonomous.</li> </ul>
Estonia	<p>Ports are operated as public limited companies based on corporate law, the Estonian Commercial Code and other relevant legal acts of the Republic of Estonia.</p>
Finland	<p>Finland has both public and private ports.</p> <p>Almost all public ports are municipal and are owned by cities but the port organization varies.</p> <p>It is also possible for the city to run the port as a private company (Hamina and Kotka): in this case the companies are 100 % owned by the municipality, but they are covered by the same legislation as other private companies.</p> <p>Finland also has private ports that are owned by industries</p>
France	<ul style="list-style-type: none"> <li>▪ Seven autonomous seaports (Marseille, Le Havre, Dunkerque, Rouen, Nantes-St-Nazaire, Bordeaux, Guadeloupe): State public undertakings with both administrative and commercial competences, enjoying specific legal status and financial independence. Autonomous seaports are subject to economic and financial control by the State. Autonomous ports are authorised, under certain conditions, to develop economic partnerships by taking shares in private or public companies or groups of companies (i.e. private terminal operators, port community data processing companies, inland transport undertakings ...).</li> <li>▪ Twenty-one seaports under State control until 2007: all these port will be handed over by 1<sup>st</sup> January 2007 either to Region, or to Department or to an entity associating regional and local governing authorities.</li> <li>▪ Fifty commercially active seaports that are under local control.</li> </ul>
Germany	<p>The German ports can be categorised as follows:</p> <ul style="list-style-type: none"> <li>▪ ports that belong to a Land and a municipality (city states e.g. Bremen and Hamburg);</li> <li>▪ ports that belong to a municipality (e.g. Kiel, Flensburg, Wolgast);</li> <li>▪ ports that belong to a Land and partially to a municipality (e.g. Wilhemshaven);</li> </ul>

Member State	Description
	<ul style="list-style-type: none"> <li>▪ ports that belong to a limited company (e.g. Wismar, Rostock, Sassnitz/Mukran);</li> <li>▪ ports that belong to a private company (e.g. Nordenham; various seaports in Lower Saxony like Emden, Cuxhaven).</li> </ul> <p>Most German seaports are neither legally nor economically independent entities, as their land and water surfaces mainly belong to the territorial authorities.</p> <p>Two main developments:</p> <ul style="list-style-type: none"> <li>▪ Privatization of State's seaports. The Niedersachsen Ports GmbH &amp; Co. KG (NPorts) was founded in the legal form of a limited partnership, with the aim to operate all seaports along Lower Saxony's coast line that were previously run by the State.</li> <li>▪ Merging of the port-related tasks of the Ministry of Economic Affairs and of the Ministry of Finance and assignment to a port authority as a separate legal entity outside the City States administration.</li> </ul>
Greece	<ul style="list-style-type: none"> <li>▪ Establishment of the General Secretariat of Ports and Harbour Policy at the Ministry of Mercantile Marine, of the Committee for Planning and Growth of Ports and of the Hellenic Ports Association</li> <li>▪ Transformation of port authorities into limited companies: in 1999 the ports of Piraeus and Thessaloniki, in 2001 the ports of Alexandroupolis, Volos, Elefsis, Igoumenitsa, Heraklion, Kavala, Corfu, Lavrion, Patras and Rafina</li> <li>▪ Even if Greek ports are still largely government-owned and their decision remain sometimes politically-influenced, the reform establishes a more flexible frame for the ports' management, and gives a higher degree of autonomy to port authorities</li> </ul>
Iceland	<p>Until 1 July 2004 the government fixed the tariffs for all ports of Iceland (not for services and leases), and there was no difference made between the ports.</p> <p>1 July 2003: new law for the ports of Iceland makes the ports of Iceland self- sufficient.</p> <p>From 1 July 2004 on, Iceland ports are free to establish their own tariffs.</p>
Ireland	<p>The principal commercial ports in Ireland are State owned companies established under the Harbours Acts 1996 and 2000.</p> <p>Each port company has a Chairman and a Board of Directors appointed by the Minister for Transport.</p> <p>The Board represents the commercial sector, labour interests and local government.</p>
Italy	<p>The seaports are defined by Italian law as public domain, which is State owned and inalienable, and devoted to navigation.</p> <p>The State as "owner" takes care, in general, of the administration.</p> <p>Port authorities are dedicated non economic public bodies.</p> <p>The Italian Parliament has started to examine some proposals modifying law 84/94 which is the ruling law for the port sector. Substantial modifications are not foreseeable at the moment.</p>
Latvia	<p>Ports are operating as landlord ports according to the "Law on Ports", adopted in 1994.</p> <p>The port authority, acting as a non-profit entity, manages the infrastructure and looks after the policing of port operations.</p> <p>The private sector rents port sites from the port authority to provide port services.</p>
Lithuania	<p>Klaipeda State Seaport is a landlord port operating under the special Law on Klaipeda State Seaport of the Republic of Lithuania. The Ministry of Transport and Communications has approved Regulations on Port Operations and Port Shipping Regulations, which are binding to all port users.</p>
Malta	<p>There are two main legislative acts:</p> <ul style="list-style-type: none"> <li>▪ the Malta Maritime Authority Act (1991) that establishes the Ports Directorate of the Authority as the port authority for all ports;</li> <li>▪ the Malta Freeport Act (1989) that establishes Malta Freeport Corporation as the Authority</li> </ul>

Member State	Description
	<p>on free ports.</p> <p>The Malta Maritime Authority Act is currently subject to review and discussions in order to further liberalize services.</p>
The Netherlands	<p>Port authorities can be:</p> <ul style="list-style-type: none"> <li>▪ municipal entities (Rotterdam);</li> <li>▪ combination of municipal and provincial entities (“Havenschappen”);</li> <li>▪ corporate bodies.</li> </ul> <p>Furthermore there are several private ports.</p> <p>The port sector in The Netherlands is very dynamic. The most important change has been the corporatisation of the Port of Rotterdam</p>
Norway	<p>The port structure is based on municipal port districts, within which one can find both public and private port sections and quays.</p> <p>Since the end of 2003, a municipal port authority has to be organised either as an autonomous municipal enterprise or as an inter-municipal liable enterprise. The aim of this reform is to make ports operate in a more business- like way.</p>
Poland	<p>The 1996 Act on Sea Ports and Harbours, which is the basis of Polish ports policy: stresses the public function of ports, and establishes rules on clear and transparent relations between the Polish government and the port authorities.</p> <p>The 30 July 2004 amendments to the Act on Sea Ports and Harbours, stipulate the rules and regulations on port charges levied by the port managing entities.</p>
Portugal	<p>The five main ports of Aveiro, Leixões, Lisbon, Setúbal and Sines are presently limited companies, the only shareholder being the State.</p> <p>Since 1997 port authorities have evolved more into landlord ports. Main points of this reform:</p> <ul style="list-style-type: none"> <li>▪ to leave commercial activities to the private sector</li> <li>▪ to reinforce the role of the port authority in coordination of activities, safety and environment, law enforcement, promotion of the port, maritime and land access.</li> <li>▪ cargo handling/stevedoring must be performed entirely by private operators</li> <li>▪ privatisation of towage and mooring services was also considered.</li> <li>▪ change of the status of port authorities from public institutes to private companies with the State as the only shareholder.</li> </ul>
Slovenia	<p>Port infrastructure is owned by:</p> <ul style="list-style-type: none"> <li>▪ the Republic of Slovenia;</li> <li>▪ the local community;</li> <li>▪ private persons.</li> </ul> <p>The Port of Koper is the only international cargo port in the Republic of Slovenia. Primary port infrastructure (such as piers, gates, adjacent land, etc.) belongs to the State and secondary port infrastructure (such as roads, rails, fences, power, telecommunications, water and waste waters installations, etc.) represents the 51% capital value for the State’s share in the company Luka Koper.</p>
Spain	<p>Spanish ports are divided in two categories:</p> <ul style="list-style-type: none"> <li>▪ Ports of general interest (in terms of volumes of traffic and economic importance), belonging to State</li> <li>▪ Ports of refuge, sports, leisure and others of a non-commercial nature, controlled by autonomous regional communities</li> </ul> <p>There are 47 Ports of General Interest, managed by 27 port authorities. The Spanish State Ports Agency "Puertos del Estado" is responsible for coordination and efficiency control.</p>



Member State	Description
	<p>Ports of general interest are based on the landlord model:</p> <ul style="list-style-type: none"> <li>▪ particular or exclusive use of public property is allowed under authorization or concession regimes (public sector contracting regime)</li> <li>▪ port services, which are provided by private operators, depend on the private contracting regime.</li> </ul>
Sweden	<p>Originally, nearly all public ports in Sweden were owned by the local authorities and run as administrations, whereas cargo handling activities were run as companies, often privately operated.</p> <p>Most Swedish ports are nowadays operated as integrated companies with both port authority and cargo handling tasks. This is the result of a merger between the old port authority and terminal operations</p>
United Kingdom	<p>Three kind of port organizations as can be pointed out:</p> <ul style="list-style-type: none"> <li>▪ Company Owned or Privatised Ports: that are free to seek commercial funding for investment on commercial terms, borrowing on their assets or issuing shares.</li> <li>▪ Trust Ports: independent statutory bodies, governed by a board of Trustees charged with promoting the well-being of the port to meet the needs of the users and stakeholders. Any surpluses are ploughed back into improving facilities.</li> <li>▪ Municipal Ports</li> </ul>

## Annex V Examples of European labour schemes

Country	Labour Scheme
UK	<ul style="list-style-type: none"> <li>• Employers recruit labour directly.</li> <li>• Most Dockers are permanently employed but the majority of employers also use casual work or agency labour if needed.</li> <li>• Training is now provided by individual companies.</li> </ul>
Belgium	<ul style="list-style-type: none"> <li>• “Dock work” as legally defined, is restricted to “dock workers” in the “port zone”, under the joint control of employers and unions.</li> </ul>
The Netherlands	<ul style="list-style-type: none"> <li>• Dockers are either employed directly by port operators or by the labour pool (SHB) which is used to accommodate fluctuation in demand.</li> <li>• Extensive training to ensure flexibility.</li> <li>• New shift system introduced to ensure greater temporal flexibility and to match skilled workers to available jobs.</li> <li>• All dockers are registered and permanently employed.</li> </ul>
Ireland	<ul style="list-style-type: none"> <li>• Dockers employed in the short sea RoRo traffic are permanently employed.</li> <li>• Other dockers are casual, allocated on a daily basis in major ports.</li> <li>• No formal provisions for training.</li> </ul>
Portugal	<ul style="list-style-type: none"> <li>• Dockers are either employed directly by port companies or by labour pool (the size for which is determined by the Minister.</li> <li>• Dock work is restricted to port workers who hold a “professional criteria” and are registered with either the port work operating centre or the port authority.</li> </ul>
Spain	<ul style="list-style-type: none"> <li>• Dockers are registered with Sociedad de Estiba, jointly owned by the State (51%) and port employers (49%).</li> <li>• The majority of dockers are still allocated from the labour pool. The labour pool is now run by employers on commercial (but non-profit-making) basis.</li> </ul>
France	<ul style="list-style-type: none"> <li>• Direct employment with operating companies, but some dockers retained their professional status.</li> <li>• Most dockers are permanently employed by the operating companies.</li> <li>• Casual work is still regulated by the State.</li> <li>• In Le Havre, crane drivers are still employed by port authority.</li> </ul>
Greece	<ul style="list-style-type: none"> <li>• “Dock work” is regulated by law, which restricts such work to recognized “dockers”</li> <li>• Current “privatizations” proposals would transfer some dockers to company employees.</li> </ul>

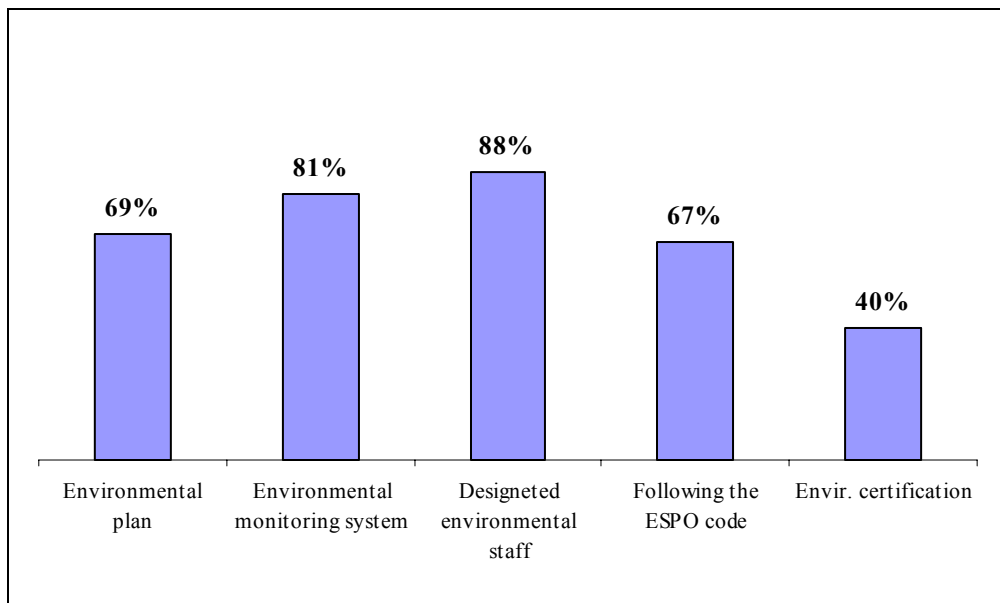
Country	Labour Scheme
	<ul style="list-style-type: none"> <li>• Dockers are employed on a permanent basis with provision for relief/pool workers.</li> </ul>
Italy	<ul style="list-style-type: none"> <li>• Companies employ labour directly on a permanent basis, and use the workers' co-operative company to meet any peaks in labour demand.</li> <li>• Some general cargo companies contract all labour from the co-operative.</li> </ul>
Germany	<ul style="list-style-type: none"> <li>• Most dockers (84%) are permanently employed, while the rest are employed by port labour pools with similar pay and conditions.</li> <li>• The pool is financed by the employers, with the allocation of men on a numerical (rota) basis. Extensive training to ensure flexibility</li> </ul>

Source: PwC elaboration on literature data (Labour Regulation and Competitive Performance in the Port Transport Industry, Peter Turnbull)

**Annex VI: Examples of provisions of mooring activities**

Country	Condition under which mooring activities are carried out
Belgium	Provided by private companies. Licensing by the port authority is required in some cases.
Bulgaria	Provided by private companies.
Cyprus	Provided by the port authority
Denmark	Provided by private companies, except for Aarhus port where mooring is provided also by the port authority
Finland	Provided by the port authority
France	Provided by private companies under the port authority's supervision; exceptionally provided by the port authority. Concession is required.
Germany	Provided by private companies, in some cases by terminal operators.
Italy	Provided by a "mooring-team" which has de facto the exclusive right for each port. Mooring is ruled by the Regulations of the Maritime Navigation Code.
Latvia	Provided by private companies. port authority establishes upper limits of tariffs.
Lithuania	Provided by private companies.
Malta	Provided by private companies ("mooring corps") having a monopoly according to a service agreement with the port authority.
Netherlands	Provided by private companies. License is required.
Norway	Provided by the port authority.
Portugal	The mooring service is provided in certain ports by the port authority, while in others this service is taken care of by duly authorised private companies.
Spain	Provided by private companies under supervision of port authority. Concession is required.
Sweden	Provided by private companies or by the port company itself. Free access to market.
United Kingdom	Provided by private companies or by the port company itself. Free market

**Annex VII: Environmental Management Status of European ports**



Source: ESPO

**Annex VIII: Goods, Passengers and Turnover per port (2005)**

<b>No</b>	<b>Port</b>	<b>Country</b>	<b>Goods (*000 t)</b>	<b>Passengers (*000 pax)</b>	<b>Turnover (mln €)</b>
1	Rotterdam	Netherland	345.819	1.518	443,2
2	Antwerp	Belgium	113.937		195,0
3	Piraeus	Greece	19.816	20.388	144,1
4	Dover	United Kingdom	21.145	13.501	83,9
5	Helsinki	Finland	11.058	8.854	81,8
6	Valencia	Spain	34.982	336	80,5
7	Tallinn	Estonia	38.816	6.701	75,3
8	Genoa	Italy	55.819	2.406	73,1
9	Hamburg	Germany	127.500	5.600	(estimated) 63,0
10	Bilbao	Spain	32.218		62,0
11	Dublin	Ireland	27.000	1.200	61,5
12	London	United Kingdom	53.843		61,0
13	Constanta	Romania	44.556		55,6
14	Civitavecchia	Italy	19.800	2.099	47,4
15	Trieste	Italy	43.355		46,9
16	Belfast	United Kingdom	13.500	1.425	43,8
17	Napoli	Italy	21.000	6.084	35,6
18	Szczecin	Poland	8.246		34,7
19	Zeebrugge	Belgium	28.442	702	29,1
20	Oslo	Norway	5.978	2.602	28,4
21	Savona – Vado	Italy	14.556	814	27,9
22	Bremen	Germany	54.190		(estimated) 27,0
23	Salerno	Italy	4.862	367	26,4
24	Aarhus	Denmark	11.167	1.710	26,2
25	Cork	Ireland	9.919	206	21,9

Source: Eurostat, Port Authorities and European Commission estimation, 2007