



EUROPEAN COMMISSION
Impact Assessment Board

Brussels,
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Opinion

Title

DG MOVE - Impact Assessment on a framework for the market access to port services, the financial transparency of ports and principles of port infrastructure charging

(draft version of 20 February 2013)*

(A) Context

There currently is no EU legislation in the port sector on the access to the port services market, financial transparency or infrastructure charging. The Commission has twice proposed legislation on port services that failed to be adopted, lastly in 2004. A 2007 Communication on ports policy announced "soft" measures: guidelines (state aid, environment), best practices (benchmarking) and cooperation and dialogue with stakeholders, to address problems with regard to port performance and hinterland connections, expanding capacity while respecting the environment, the necessity of port modernisation, the need to provide clarity to investors, operators and users, and port labour issues. According to a Court of Auditors' report (2012) the value added of investments in port facilities depends on the quality of connections with national/regional networks. Therefore the Connecting Europe Facility (CEF) and Cohesion policy now prioritise projects to improve port access and hinterland connections. Several Member States have recently undertaken reforms of their port policy, including port labour markets, partly as structural adjustments required by the Conditional Assistance Programme to Member States in financial difficulties (Greece, Portugal and Ireland). Some other Member States have not significantly changed their national ports framework. The White Paper on Transport (2011) and the Single Market Act II (2012) emphasise the need to review the EU's ports policy.

(B) Overall assessment: POSITIVE

The report should be strengthened on a number of points. First, it should clearly define and explain the relative importance of the main problems the initiative aims to address (i.e. differences in port performance, internal market restrictions or congestion issues), and it should present a more robust baseline taking account of changes made by Member States. As this initiative introduces legislation where EU intervention has so far been absent, the report should strengthen its subsidiarity analysis, especially with respect to local or regional problems, such as "lack of coordination within a port". On the basis of a clearer problem definition, supported by evidence, the report should refine its key objectives and clarify the links to other relevant policies, such as structural funds and the European Semester process. Third, the report should better explain its choice of options, including a discussion

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted

of possible horizontal instruments (on transparency, concessions, infrastructure charging etc). Fourth, it should be more transparent about the underlying assumptions and the evidence (survey data) used for calculating the expected costs and benefits of the options. Finally, the report should better address the critical opinions voiced by some stakeholders regarding the consultation method and analysis carried out, and more clearly present different views of stakeholders on the proposed options.

(C) Main recommendations for improvements

(1) Strengthen the problem definition, the baseline scenario and the subsidiarity analysis. The report should clearly identify the main internal market access restrictions that should be addressed, and explain why they cannot be tackled through the application of competition and state aid rules. It should better explain that congestion problems are mainly related to hinterland connections, and how inefficiencies and lack of transparency in port operations discourage the necessary investment to improve those connections. It should also better explain the relative importance and overall problem relevance of the presumed performance gaps across ports. The report should indicate which assumptions were made concerning the legal framework, national policies, world trade volume, economic growth to make the port capacity utilisation projections under the baseline scenario. It should clarify that port ownership or governance structures and port performance are not linked. Where figures cannot be provided for commercial reasons the report should make clear that the analysis is based on concrete but confidential data. The baseline scenario should take into account the impact of other relevant policy developments in individual ports, at Member State and EU level. More specifically, it should examine the implications of the recent port reforms in Germany, Finland, France, Spain, Greece, Portugal and Ireland. It should also explain which decisions regarding TEN-T ports have already been taken in the context of the next Multiannual Financial Framework and how this initiative is linked with the European Semester. As this initiative introduces legislation where EU intervention has so far been absent, the report should strengthen its subsidiarity analysis, especially with respect to local or regional problems. For example, it will need to explain why an issue such as "lack of coordination within a port" requires an EU level approach. In this context it should also explain that some elements of the options, for instance the introduction of "port user committees" follow an approach that has already been applied in other transport sectors (i.e. airports).

(2) State the objectives more clearly. In line with a clearer identification of the core problems that need to be addressed the report has to be clearer on what the initiative aims to concretely achieve, both in terms of the overarching objective and at the more specific and operational level. A clearer connection should be made with the indicators that are identified for future monitoring, preferably by setting targets for specific improvements that the initiative aims to achieve, where possible in quantitative terms and with a timeline.

(3) Better explain and present options. The report should explain why only port sector specific instruments have been considered instead of addressing (at least some of) the issues via a horizontal approach (for instance on transparency, concessions, transport infrastructure charging etc). The alternative to rely (for some issues) more on horizontal instruments should be considered as an option. With regard to the issue of port labour market conditions the report will have to indicate, for reasons of transparency, whether, how and possibly when these could be dealt with in European Social Dialogue.

(4) Be more concrete about the costs and benefits of the options. The report should explain how the impact of the different policy packages on direct and indirect transport costs, on the increase in short sea shipping and modal shift has been calculated, and where these are based on results from user surveys this has to be indicated, with proper reference to uncertainty and possible bias. If ports need to recover their expenses through full-cost charging, the analysis has to provide robust results to indicate an order of magnitude of possible price increases. Also the possible mitigating effect of Public Service Obligations (PSOs) and competitive tendering should be more explicitly taken into account. The report needs to clearly address the regional distribution of the impacts, as well as a clearer indication of the benefits accruing to specific industrial sectors and other actors. The assessment of environmental impacts should be strengthened, for instance by addressing direct impacts through water pollution and the handling of shipping waste.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report

(D) Procedure and presentation

The report should explain why no full public consultation was held. It should explicitly address the critical opinions voiced by some stakeholders regarding the consultation method and analysis carried out for this initiative, especially with regard to the questionnaire design that was used. It should present stakeholder views on the proposed options throughout the report.

(E) IAB scrutiny process	
Reference number	2013/MOVE/016
External expertise used	No
Date of IAB meeting	20 March 2013