

The future EU ports policy

Position of the Flemish Ports Association

Introduction

The European ports sector is characterised by a high degree of diversity. This diversity offers added value for the European economic space, and therefore has to be maintained. Accordingly, a “one size fits all” approach for a future European ports policy is not appropriate.

Furthermore, initiatives to support the port sector must remain possible at Member State level, as long as they are compatible with general EU legislation and regulations, in particular as regards distortion of competition.

The Flemish Ports Association also emphasises that stringent regulations can harm the competitiveness of the European seaports, and so are absolutely not desirable. The Flemish Ports Association therefore pleads in the first place for “soft law” from the European Commission rather than a directive with compulsory force.

The Flemish Ports Association considers that the following principles must be central to any future European ports policy:

1. Legal certainty
2. Level playing field
3. Open access to the market

Finally, the Flemish Ports Association wishes to express its appreciation for the importance that the European Commission has attached to wide-ranging consultation with stakeholders in its preparations for a future European ports policy. The Flemish Ports Association urges the Commission to continue this stakeholder consultation in future when taking further initiatives that can have an impact on the working of the European port sector.

I. Port services and the role of port authorities

Port authorities have a commercial role and a public service role. In Flanders these roles are kept clearly separate from each other, with completely separate accounting, which affords greater transparency.

Free access to the market is a central principle of the European economic space. The Flemish Ports Association considers that the existing EU legislation (concerning public tenders and distortion of competition, among other things) is a sufficient means to guarantee this access to the market.

However, the Flemish Ports Association asks for special attention to be paid to nautical services of a technical nature. When it comes to such nautical support services (such as pilotage, tugging, mooring etc.) companies need above all to have efficient services at market rates, under safe conditions. The Flemish Ports Association is not convinced that such technical nautical services are necessarily of a public service nature. Certain aspects of technical nautical services such as sea or river pilotage might be treated as public services provided by the authorities, provided that they are carried out efficiently and offered at market rates.

In such a case, clear criteria must be laid down for users to be exempted from the pilotage obligation, based on a neutral “risk based assessment.”

Finally, the Flemish Ports Association emphasises that if technical nautical services are to be considered as services of general economic importance, with a limitation on the number of service providers, then access to the market must be guaranteed by an open tender procedure. But in this case too, priority must be given to ensuring an efficient service at market rates.

The Flemish Ports Association is not in favour of a European initiative to lay down procedures for granting concessions in the port sector: the general rules for access to the market are a sufficient guarantee of a fair procedure. On the other hand, the Flemish Ports Association emphasises that the concession periods must be sufficiently long, as this offers a guarantee that the companies will be able to obtain a normal return on investment, and thus ensures continuity of investment in the port sector.

II. Port financing

Investments in port infrastructure and superstructure are very capital intensive. When it comes to such investments, what private companies need above all is a transparent framework that offers legal certainty.

The lack of a clear European framework for government support, adapted to suit the particular features of the port sector, leads at certain moment to the lack of a level playing field,

especially from the point of view of service providers. The Flemish Ports Association therefore supports the intention of the European Commission to establish a transparent framework in this area. The Flemish Ports Association considers that this can best be done by soft law rather than a directive with compulsory force. When it comes to the practical implementation, however, it is necessary to ensure that provision of good, efficient port services at acceptable prices is not compromised.

Such a framework has existed in Flanders since 1999 with the Ports Decree, to the satisfaction of all parties concerned. This defines specific criteria for cases where state aid is not permitted, based on the principle that state aid must not result in distortion of competition, either between companies or between ports. This framework was submitted to the European Commission, which duly approved it. The Flemish Ports Association would like to put this Ports Decree forward as an example of “best practice”.

The Flemish Ports Association views port dues as a strictly commercial matter that should be left up to the port authority acting independently. A European initiative in this matter is certainly not desirable. On the other hand, the Flemish Ports Association emphasises that port dues have to be transparent, relevant and freely negotiable.

III. Sustainable development

The average annual growth of 8 to 10% in container volumes means that efficient use has to be made of existing port capacity, and that new capacity will have to be built in good time. In the latter connection, companies in the port sector are faced with inappropriate European environmental legislation which does not make enough allowance for the special features of the port sector. This hinders the necessary development and creates legal uncertainty. The Flemish Ports Association therefore emphasises the absolute importance of involving the stakeholders in drawing up European environmental legislation, right from the very early stages. The Flemish Ports Association also emphasises the great efforts that have been put into ecological development by these companies. However, such efforts must not be allowed to weigh on the primary function of a port area, namely to serve the economy.

The idea of promoting the use of onshore electricity or even making it compulsory has recently been put forward both at European and at world level. The Flemish Ports Association considers that such an initiative is not desirable, given the lack of a worldwide standard. Furthermore, it would require huge amounts of onshore generating capacity. As regards reducing ships' emissions, the Flemish Ports Association emphasises that the only correct approach is a holistic one.

The Flemish Ports Association notes that there is already a wide degree of collaboration at the level of individual companies. While similar collaboration may be promoted among port authorities, this should not be allowed to degenerate into a centralistic policy. Freedom of

action on the part of the different port authorities - especially in commercial terms - must remain the priority.

IV. Dock labour

Flexible organisation of dock labour is a crucial factor in the competitiveness of any seaport. While the applicable rules governing health & safety at work must of course be observed, safety considerations should not be misused as a pretext for introducing the necessary changes.

The Flemish Ports Association considers that making agreements on pay and working conditions is clearly the responsibility of the social partners at the level of Member States: a European initiative in this matter is not desirable.

In Flanders there is already a clear legal framework for dock labour and handling of ships, and so ratification of the ILO conventions is not desirable, in the view of the Flemish Ports Association.

V. Hinterland connections

Good, congestion-free hinterland connections are essential for seaports. The Flemish Ports Association considers that the EU has an important role to play in implementing a coherent transport policy which of necessity is cross-border in scope. In this connection the Flemish Ports Association points in particular to the importance of the Trans-European Networks (TENs). However, the Flemish Ports Association regrets the great degree of uncertainty that remains around the financing of these large, important infrastructure projects. It looks very much as if only a very limited number of the projects selected will actually be carried out. This lack of clarity is at odds with the repeated statements emanating from the EU emphasising the importance of investing in public infrastructure. The Flemish Ports Association therefore pleads strongly for the necessary attention to be paid to financing of these TENs, which are of such vital importance for the European economy.

The Flemish Ports Association supports the changing position of the European Commission with regard to the modal shift principle. The concept of co-modality as put forward in the revised 2006 White Paper on Transport is closer to the economic reality.

The Flemish Ports Association resolutely rejects any initiative aimed at the flow of goods being directed by the EU, and emphasises that goods find their way as a combination of geographical circumstances and market forces; any meddling in this by the EU would be totally counter-productive.

In particular as regards rail transport, the Flemish Ports Association calls on the European Commission to continue its efforts towards liberalisation and a clearer division between operation on the one hand and infrastructure management on the other, and to keep a further close watch on the practice at the level of individual Member States. Any European initiative that leads to a more efficient service is to be applauded.

Finally, the Flemish Ports Association calls on the European Commission to simplify and streamline the administrative procedures, as the increasing impact of these at European level frequently leads to additional administrative costs for companies. This development must be halted in its tracks.