



State aid and the port sector: the European perspective

Port-Net workshop 'Port-Financing I'

12 September 2006, Hamburg

Lieselot Marinus

Summary

- 1. A few words about ESPO**
- 2. Public funding of ports: an old discussion**
- 3. Trends in European seaports**
- 4. Relevance of public funding**
- 5. EU initiatives regarding public funding of ports**
- 6. Commission's current thinking**
- 7. Viewpoint of European port authorities**
- 8. What brings the debate on EU port policy?**
- 9. Conclusions**

1. A few words about ESPO



- Founded in 1993
- Represents European seaport authorities
- Members from EU+EEA
- Secretariat in Brussels
- Recognised counterpart of EU institutions

2. Public funding of ports: an old discussion (I)

« Seaports should not be subsidised »

Richard Goss

Versus

« Ports should be efficient
(even if it means that some of them are subsidised) »

Fernand Suykens

Journal on Maritime Policy and Management' - 1986

2. Public funding of ports: an old discussion (II) - arguments

pro

- A port provides public and commercial services
- Port infrastructure is a public good
- A port is of strategic importance for economy and welfare region/country

contra

- Public funding distorts competition
- Marginal social productivity of use of public funding is small
- Part of the benefits not benefiting the region/country

3. Trends in European seaports (I)

(Vademecum European Commission 2003 – EU15)

“A” countries:

*infrastructure financed
through public funding*

- Belgium
- Germany
- France
- Italy
- The Netherlands

“B” countries:

*infrastructure financed
through private capital*

- Denmark
- Finland
- Greece
- Ireland
- Portugal
- Spain
- United Kingdom
- Sweden

3. Trends in European seaports (II)

Division “A” and “B” countries is rather simplistic

- State aid:
 - Exists in different forms (direct and indirect)
 - Takes place at different levels (from village to EU)
 - is (mostly) not transparent
- There does not exist a clear and complete picture
- There is proof of different forms of State aid in a lot of the “B” countries and the new Member States
- The question is not whether State aid exists, but whether it distorts competition and by consequence is not allowed
- This neither is clear today
- Public funding decreased in a lot of ports

4. Relevance of public funding

- *“Port dues, that is, the payment for the port infrastructure, are only a minor part of the sea transport and port expenses. Shippers and shipowners alike will certainly agree that reliability, social peace and high efficiency of cargo-handling are of greater importance.”* (Suykens – 1986)
- Sensitiveness markets for price changes (ATENCO study - 2001)
- The grass is always greener at the other side – approaches on competition distortion are often “part of the game”
- Has there been enough objective research on market distortion by public funding for port infrastructure?

5. European initiatives regarding public funding of ports (I)

- Specific policy initiatives on ports:
 - Green Paper on Ports (1997)
 - Communication on financing in “port package” (2001)
 - Directive proposals on port services (2001, 2004)
 - Vademecum on State aid (2003)
 - Draft Guidelines on State aid (2005 – not public)
 - Draft Guidelines on infrastructure charging (2005 – not public)

5. European initiatives regarding public funding of ports (II)

- Studies:
 - Price Waterhouse (1993 – not public)
 - ATENCO (2001 – very late published)
 - ISL (2006 – not finalized)
- Port related cases (rather limited)
- General legislation and policy initiatives on transparency, State aid, infrastructure charging, etc.

6. Commission's current thinking (I)

- Draft State aid guidelines in preparation
- Aim: clarify how and to what extent Treaty rules on State aid apply to public financing of ports and establish compatibility criteria to allow such financing
- Scope:
 - Public financing of port installations, of port authority operations of a commercial nature, to port service providers;
 - No retroactive application;
 - Any form of public funding;
 - Whatever legal structure of the beneficiary;
 - Threshold ports 1,5 million tonnes / 200.000 passengers;
 - Construction and maintenance investments outside the port area but connected to it excluded.

6. Commission's current thinking (II)

a) Provision of port infrastructure

Port infrastructure : port access and port defence infrastructure (dikes, navigations aids, ...) and general port infrastructure (berths, channels,.....).

Principle: State constructing, renovating or financing port infrastructure owned by it: within State's powers as public authority, making available the tools to achieve its policy objectives (regional economic development, transport policy, etc.). Outside Treaty rules on competition.

However:

EC vigilant infrastructure not largely reserved to specific user(s) or operator(s) – assess compliance with Treaty rules by ensuring whether all potential users are granted **equal and non-discriminatory access** and whether **separate accounts** with precise allocation of revenues and costs are hold.

No element of State aid if transparent and non-discriminatory award procedure.

6. Commission's current thinking (III)

b) Operation of port infrastructure and provision / operation of port superstructure

Port superstructure: surface arrangements, buildings, equipments, etc.

Principle: not allowed – out of own resources.

However: State compensates for public service obligation:

- 1) No State aid: Altmark conditions are met:
 - Undertaking has actual and clearly defined public service obligation;
 - Calculation of compensation established in advance, in objective and transparent manner;
 - Compensation not exceeding costs;
 - Undertaking chosen following public procurement or compensation calculated on basis of performance of a 'typical undertaking'.

6. Commission's current thinking (IV)

2) State aid exempted on basis of art. 86 (2):

- aid is limited to necessary amount, proportional to cost assigned task, etc.
- aid is not affecting trade between MS contrary to common interest.
- public service obligation is - in advance and precisely - defined in public instrument.
- separation of accounts for different activities managing body and transparent accounting system.

Fire-fighting, emergency services, maritime traffic control, etc. fall within State's powers. In case provided by third party, no State aid if selected through open and non-discriminatory procedure.

6. Commission's current thinking (V)

c) Financing to providers of port services

Principle: only allowed if compliance with horizontal State aid schemes.

EC vigilant respect of non-discrimination between providers when MS apply these schemes.

d) Prior notification

Case by case or general State aid regime or framework.

Exempted from prior notification on basis of the guidelines:

- Concessions for exclusive use of an infrastructure or for the delivering of port services if concession has been subject to public tender;
- Compensations for public service obligations, where four Altmark conditions are not met.

7. Viewpoint of European port authorities (I)

- Port authorities would like:
 - transparency
 - financial autonomy
 - clarity and legal certainty on what is and is not allowed with regard to public funding (guidelines on State aid)
- Absolutely no need for regulating port charging

7. Viewpoint of European port authorities (II)

What do port authorities expect from State aid Guidelines?

- ESPO-FEPORT paper 1999 introduced kind of ‘draft’ for guidelines
- Main lines:
 - Investments in ‘public’ or ‘general’ port infrastructure : no State aid/ no notification
 - Investments in ‘user-specific’ port infrastructure: State aid/ notification
 - Investments in superstructure, mobile assets : State aid/ notification
- Grey area: are docks and quaywalls ‘general’ or ‘user-specific’ infrastructure?
- Interpretation “cost recovery” principle: public financing which is recovered through charges does not constitute State aid

7. Viewpoint of European port authorities (III)

Recent research within ESPO on current EU thinking on State aid

- Support for development European guidelines still there
- Tendency towards support for current EU thinking however a lot remain vague when it comes to the details
- Defining 'grey zones' is crucial, e.g. definitions infrastructure, terms 'public funding', etc.
- Some demand a more radical approach, some put question marks with regard to importance guidelines/State aid

8. What brings the debate on EU port policy? (I)

- Transparency:
 - basic rules already exist (e.g. Directive 2000/52/EC)
 - ISL study should bring ‘definite’ clearness
- State aid guidelines to seaports:
 - in 2005 drafted but “frozen” because of port services Directive proposal
 - these can be ‘defrosted’ and put forward for consultation (already happened for airports)

8. What brings the debate on EU port policy? (II)

- Financial autonomy ports: can EU impose this or only stimulate?
- Charging seaports:
 - in 2005 draft-Directive drafted and also 'frozen'
 - this draft would strongly restrict commercial freedom of port authorities
 - Commission still wants to address the issue of port infrastructure charging (mid-term review White Paper)

9. Conclusions

- State aid guidelines cannot be seen in isolation from a wider policy perspective on port management and port development
- Commission has launched a debate on a EU port policy. Six regional workshops will be organised with the stakeholders (MS will be consulted in parallel working groups). One of the workshops will address the issue of port financing (Hamburg, 18-19 January 2007)
- Outcome of the debate: Commission Communication, including a concrete action plan by June 2007.

For more information:

www.espo.be – lieselot.marinus@espo.be



Thank you for your attention