

EFIP MEMO 71: Inland ports exempted from upcoming ports policy

Dear EFIP members,

As already announced last week I can now confirm that inland ports will not longer be considered in the forthcoming ports policy. This was confirmed both during the meeting we had on 15 January with Henrik Hololei and Marit Ruuda from Commissioner Kallas' Cabinet and the public hearing that was organised by the Commission on 18 January.

Can I take the opportunity to thank all of you who attended and participated actively in the meeting with the Cabinet. I believe it was a good meeting, we had the chance to pass a strong position and clear arguments to the Commission.

The European Commission acknowledges the specificities of the inland ports. The Commission also realises that they need more background information and a proper analysis of inland ports before taking any action. Therefore inland ports policy will be discussed in the context of the review of the Naiades programme. But there as well, we should not expect yet too much ports policy issues since the preparation of the Naiades review is already in a advanced stage and it will be difficult to bring in these new way of thinking at this stage.

I believe the exemption of inland ports is very good news. In attachment you will find a presentation I made at the meeting of 15 January in our offices in preparation of the meeting with the cabinet. I have adapted the presentation in function of the outcome of the discussion with the members.

In the presentation attached, you find:

1. background of the whole discussion on ports policy
2. presentation of the Commission discussion paper featuring the main points of the forthcoming ports policy
3. arguments to be used in support of the exemption of inland ports.
4. a list of proposals/initiatives we believe would help inland ports

Even if at this stage, inland ports will not be part of the forthcoming ports policy, the discussion of **the forthcoming sea ports policy remains important for us:**

- 1) maritime ports will become more and more business partners of inland ports

- 2) the questions and issues that are now being at stake for maritime ports will probably also be on our table once an inland ports policy is being discussed. This could already be partly the case in the framework of the Naiades review.
- 3) Even if the Commission will be excluding inland ports in its proposal, we must keep in mind that during the legislative process this might change, if f.i. the Parliament would propose to broaden the scope. Even if hypothetical, it is important to have our arguments ready.

Summary of the public hearing of 18 January

The European Commission held a public hearing for port stakeholder organisations and Member State experts, which formally closed the review process on EU ports policy that Commission Vice-President Kallas initiated in autumn 2011.

Following the consultation process which included two questionnaires and a conference, and a reflection on the results, the Commission has narrowed down the possible proposals and options to be considered. These are reflected in the discussion paper prepared by the Commission. During the hearing, the discussion took place in different thematic blocks. We provide you with the conclusions reached by the Commission at the end of the meeting for each of the blocs discussed:

- Ports perspectives & need for EU legislation:
 - The ports policy review is welcomed by stakeholders.
 - Stakeholders have identified issues that could be improved: level playing field, ports position in the supply chain, transparency of public funding, legal certainty, etc..
 - Open markets can provide a positive effect on the development of ports.
 - Some areas were identified which would require EU action while others would not. Further discussion is on the form EU intervention should take.
 - The Commission should be cautious on deciding what should be done at EU level.
- Inland ports
 - The European Commission acknowledges the specificities of the inland ports. More background information and analysis is required by the Commission before further action is taken. Therefore inland ports policy will be discussed in the context of the review of the Naiades programme.
- Scope of the measures (Should measures cover all ports or only part of them? Should the Commission link ports framework to TEN-T policy?)

- Participants agreed that the scope discussion is linked to the concrete measure, but a priori no distinction should be made between core and comprehensive network ports.
- Coordination between ports
 - Stakeholders see the need for coordination between ports only when public funding is involved. Coordination would in any case be needed when EU funding is involved.
 - The European Commission should not intervene in the development of ports.
 - TEN-T policy already provides good framework for coordination, as in the implementation of the TEN-T corridors. No need for further action at EU level.
- Administrative simplification and coordination in ports
 - As regards port users committees, the commission notices that they already exist in some ports and that best practices are identified. In this area, the Commission should not be prescriptive.
 - The port users committee should be independent and have an advisory nature. Port authorities should be able to set their own policy without users' interference.
 - As regards the proposal to draft an administrative simplification action plan at port level, stakeholders agreed that the Commission should avoid creating new requirements but instead, provide insight for better collaboration between different authorities.
- Social dialogue
 - Stakeholders welcomed the likely start of the social dialogue in spring. The Commission will give its support to the discussions by all means available, for example through studies or other administrative assistance available.
- Market access
 - Some stakeholders imply that there should be a differentiation between technical nautical services from cargo handling. As concerns cargo handling, stakeholders request further legal certainty as regards the scope of the horizontal directive on concessions and through existing case law. The Commission should not bring an additional legislative layer but focus on providing legal clarity.
- Transparency
 - Stakeholders expressed reticence as regards the separation of accounts when no public funding is involved.

- As regards port dues, the Commission should not impose a relation between marginal cost and port dues because of its commercial aspect. The notion of “cost relatedness” was being criticised by different stakeholders.
- Port authorities should be autonomous in setting of their own charges. Regimes and legal nature of port dues are very different in Member States. In some Member States the port dues are considered as taxes. (In Spain, these are even based on the constitution)

Jean-Eric Paquet, DG MOVE’s Director European Mobility Network, concluded the hearing by identifying the three options that would be considered in the next months, the most likely outcome being a mix of option 1 and 2:

- Option 1: Targeted transparency (no proposal on market access). this option would imply that the Commission is not adopting legislation on market access but is tackling the issues with jurisprudence (individual court cases) and on the basis of the horizontal concession directive
- Option 2: Regulated competition with common rules for market access and rules to achieve a more harmonized transparency and coordination.
- Option 3: Complete open market access

DG MOVE invited further written contributions to be sent in the week following the hearing. This formally closes the consultation process and the Commission will then complete its impact assessment process with a view of finalising a proposal for inter-service consultation and adoption.

IR/ 22 January 2013