

An analysis of the European Union ports policy

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Abstract

Less than a year after the Commission's proposal for a Directive on the market access for port services was rejected in the European Parliament, the submission of a revised version of the 'port package' by outgoing EU Commissioner Loyola de Palacio in October of 2004 was met by a widespread lack of enthusiasm by the European port industry and by dockers unions. Many people fear that if there is inadequate consultation this revised draft Directive will have the same fate as its predecessor. At the same time, the advent of the ISPS code has put in place an impressive array of regulations to safeguard EU ports from acts of terrorism and other unlawful acts. Also, the 'Prestige' tanker disaster has triggered important legislation that may affect ports, on top of existing safety and environmental protection policies and other measure.

This paper takes stock at the broad spectrum of both current and proposed port safety, security, and environmental protection legislation, vis-à-vis the general policy thrust of the EU in the area of transport and discusses the situation faced by the port sector and EU intermodal transport in the new regime.

Specifically, this paper tackles the following question: If one takes all important port-related policy initiatives under consideration, would he or she conclude that things are going well for the European ports sector? The impressive array of regulations that are in place or are planned for the EU port sector warrant an attempt to make an analysis of the collective effectiveness of such instruments. Without being encyclopedic, such an attempt is made in this paper, by trying to identify problems, challenges and opportunities, along with recommendations on how to improve the current situation.

Introduction

At first glance, news as regards the development of ports in the European Union seem encouraging. Growth statistics aside, at the European Sea Ports Conference in Rotterdam in June 2004, EC Commissioner Loyola de Palacio reiterated that short sea shipping remains an important priority of the European Union, and plans are on the way to further streamline it so that it

achieves the EU transport policy goals (de Palacio, 2004). The recent EC Communication on short sea shipping provides more documentation on where this sector stands and what the plans are in this area (EC, 2004d).

Indeed, in the European Commission's White Paper "European Transport Policy for 2010: Time to Decide," (EC, 2001a) ports have a critical role within the Community's transport policy for the

next decade. Shifting traffic (mainly cargo) from road to sea has been adopted as a main policy goal, and specific actions are proposed to move forward towards that goal. As growth in European road transport has been recognized to create significant problems, such as congestion; pollution; noise; accidents; and others, these problems create significant 'external' costs, which are not reflected in the price of services rendered. According to the White Paper, the most recent estimate of the external costs of road congestion is 0,5% of Community GDP, something that will increase by 142% to €80 billion a year in 2010 (that is, approximately 1% of GDP) if no action is taken. Any action to be taken is certain to involve EU ports, as in order to achieve this strategic goal, one would need these ports to operate efficiently.

From a literature perspective, papers on EU ports policy mostly focus on competition and pricing issues. One can cite the works of Kent and Ashar (2001), Farrell (2001), Haralambides et al (2001), and Haralambides et al (2002), as examples. This paper takes a more 'holistic' approach, by taking stock at the broad spectrum of legislation affecting EU ports, both as regards the general transport policy thrust of the European Community and as regards safety, security and environmental protection. Given the impressive array of regulations either in place or planned for the port sector, it is fair to attempt to make an assessment of the overall effectiveness of such instruments, by trying to identify problems, challenges and opportunities, along with recommendations on how to improve the current situation.

The rest of this paper is structured as follows. The next section takes a look at some recent developments in the EU transport policy area that affect the European port sector. The section that follows does the same from the perspective of safety, security and environmental protection policy. The final section synthesizes the findings of the previous two sections and discusses prospects for the future.

Transport policy developments that may affect ports

There have been a series of developments that can be seen as supportive to the objective of shifting cargo from land to sea. For instance, the Commission adopted the proposals by the High-Level group headed by EC Commissioner Karel van Miert regarding the revision of the Trans-European Transport Network (EC, 2003c), and the European Parliament approved the Council's Common Position on the Commission's Proposal. Of particular interest is the proposed creation of a network of "Motorways of the Sea," with four such maritime arteries identified across Europe (see also Figure 1):

1. The 'Motorway of the Baltic Sea', linking the Baltic Sea Member States with Member States in central and Western Europe;
2. The 'Motorway of the Sea of Western Europe', leading from Portugal and Spain via the Atlantic Arc to the North Sea and the Irish Sea;



Figure 1: European motorways of the sea

3. The 'Motorway of the Sea of South-West Europe', connecting Spain, France, and Italy and including Malta, and linking with the motorway of the sea of southeast Europe;
4. The 'Motorway of the Sea of South-East Europe', connecting the Adriatic Sea to the Ionian Sea and the Eastern Mediterranean to include Cyprus.

The aim of the motorways of the sea, to be fully implemented by 2020, is to concentrate flows of freight on a few sea routes in order to establish new viable, regular and frequent maritime links for

the transport of goods between member states and thus reduce road congestion and improve access to peripheral and island countries. Again, EU ports would play a critical role in the development of the motorways of the sea.

In addition, the Commission has launched the *Marco Polo* program (EC, 2003a) -the program that succeeds the previous *PACT* program (Pilot Actions for Combined Transport)- to support intermodality. The goal here is to shift 12 billion ton-kilometers a year from road to non-road modes.

If one takes all of the above important activities under consideration, one may deduce that things are going very well for European short sea shipping and

intermodal transport, at least from a policy viewpoint. By implication, and given that ports would play a pivotal role in the implementation of short sea and intermodal policies, one may get the impression that an equally positive outlook exists for the European ports sector. Furthermore, if one compares the European scene with the situation in North America, where similar road congestion problems exist but the approach to solve them using short sea shipping has still a long way to go (especially in the United States), then one may get the impression that Europe is far ahead in this area and things are really looking good. But is this really the case?

It is this author's opinion that Europe too has a long way to go, and in fact things can be considered as rather unsettling.

First of all, in the area of transport policy, and in spite of much talk since at least the early 90s, news as regards short sea shipping in Europe has not been that encouraging. Examining the EU-15, even though short sea shipping grew considerably between 1990 and 2002 (36%), road transport grew even faster (41%). In fact, in 1985 road surpassed short sea shipping as the top transporter in intra-EU trades in ton-km, a position that it held at least until 2002 and will continue to hold if no serious action is taken. In 2002 the score was 1.376 billion ton-km for road versus 1.255 billion ton-km for short sea shipping. The trend was even more disturbing, as in 2002 the proportion of ton-km carried by sea dropped from 41,6% in 2000 to 40,8% in 2002, while in the same period for road this proportion increased from 43,2% to 44,7%. (EC, 2004g- see also Figure 2).

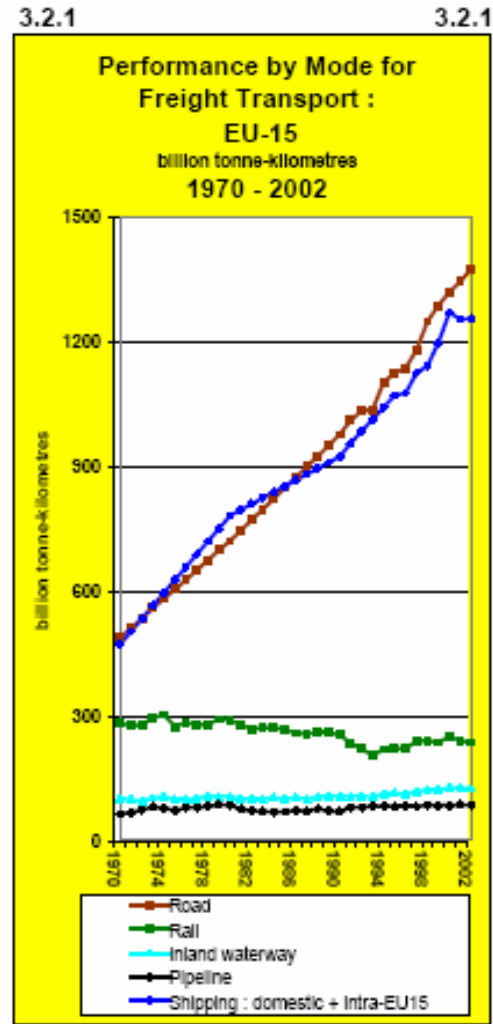


Figure 2: EU-15 modal split

In addition, *Marco Polo* has encountered problems in the European Parliament and in the Council of Ministers, and in fact received considerably lower funding than previously advertised (about €100 million for the period 2003-2006, that is, about €25 million a year). The first call for proposals for *Marco Polo* was out in 2003, and funding for it was just €15 million. The Commission retained 13 projects out of a total of 92 proposals. The second call was out in late 2004. The Commission has also presented a proposal for *Marco Polo II* with a budget of €740 million for 2007-2013 (EC, 2004e), but its final form and

budget are still unclear, depending on the outcome of the negotiations with the European Parliament and Council.

In another related development, a separate legislative initiative by the Commission that purports to enhance short sea shipping, the proposal for a Directive on European Intermodal Loading Units (EC, 2003b), has encountered widespread lack of enthusiasm by the European port industry, among others. The concern is that the Directive would undermine the very intermodal efficiency it aims to increase.

In November 2003 the Commission's 'flagship' legislative proposal for a Directive on the market access for port services, also known as 'port package' (EC, 2001b) was narrowly defeated in the European Parliament. This happened after at least three years of negotiations, in addition to the time that elapsed since the Commission's Green Paper on sea ports and maritime infrastructure (EC, 1997b). The rejection was a very serious setback for everyone who wanted things to move in the fronts of competition and efficiency. These included first and foremost the Commission itself, but also industry bodies such as ESPO (the European Sea Ports Organisation), ECSA (the European Community Shipowners Association) and ESC (the European Shippers Council). At the same time, the rejection was portrayed as a triumph by a heterogeneous spectrum of stakeholders, ranging from dockers unions at one end to various private ports at the other.

To some, the rejection of the port package was not entirely a surprise. The compromise text that was put to vote,

which had little relation to the original text proposed by the Commission, tried to 'satisfice' almost everybody, but accomplished something that was unthinkable a few years ago: it united against it forces that one would logically assume to be for it in the best case, or against each other in the worst case. Many felt that the package forced a 'one-size-fits-all' model onto a widely diversified industry and that inadequate consultation with trade unions and the industry was a major problem.

In October 2004, outgoing Commissioner de Palacio submitted an improved version of the port package (EC, 2004f). Some regard this version as 'the swan song of Mrs. De Palacio', or 'the revenge of Mrs. De Palacio'. The widespread view from the port industry was that it would be premature to resubmit the port package to the Council of Ministers and the European Parliament before making sure that adequate consultation with stakeholders takes place. Many people think it was precisely the lack of such adequate consultation that made the previous directive fail. Along with a number of other stakeholders, ESPO had issued a call to the Commission asking it to freeze the discussion on this topic (ESPO, 2004a), only to see 'port package No. 2' officially submitted a few days later. In November 2004 ESPO launched an appeal to the European Parliament, the Council of Ministers and the Commission to consider jointly with the port sector a fundamental revision of the new directive, voicing the concern that *"the proposal we now have on the table is not going to help ports in facing their common challenges"* (ESPO, 2004b). As these lines are written, the fate of the new port services directive is

unclear, but attempts are being made by the port industry stakeholders to influence the process.

Safety, environmental protection and security policies that may affect ports

Turning to safety and environmental issues, it is not within the scope of this paper to look at the important Port State Control policies and procedures, such as inspections, detentions, and others, that are enforced within EU ports as regards *ship* compliance to relevant laws and regulations. These are policies that can have a significant impact on maritime safety and environmental protection, but have a limited impact on ports. Rather, the focus here is on a number of related policies that are directly or indirectly applicable to *port* operations, planning and development. These include (listed chronologically):

1. The Bathing Water Directive (EC, 1976a),
2. The Dangerous Substances Directive (EC, 1976b),
3. The Wild Birds Directive (EC, 1979),
4. The Health and Safety in the Workplace Directive (EC, 1989),
5. The Shellfish Directive (EC, 1991a),
6. The Urban Waste Water Treatment Directive (EC, 1991b),
7. The Habitats Directive (EC, 1992),
8. The Environmental Impact Assessment Directive (EC, 1997a),
9. The Waste Reception Facilities Directive (EC, 2000a),
10. The Water Framework Directive (EC, 2000b),

11. The Strategic Environmental Assessment Directive (EC, 2001b), and

12. The Environmental Liability Directive (EC, 2004a).

There is more. As a result of the *Prestige* disaster, the Commission proposed a Directive to introduce criminal sanctions for ship-source pollution offences (EC, 2003d). The Commission initially included, among the parties liable, the ship owner, the owner of the cargo, the classification society or any other person involved. The Parliament has added the competent port authority. It is already known that the Parliament, after the *Prestige* accident, had tasked the Commission to investigate, among other things, the possibility of establishing a *financial liability regime* for ports refusing to give access to ships in distress. But now it seems that we may see *criminal* liability imposed on port authorities.

Turning now to port security, it is well known that ports had to comply with IMO's ISPS code as of July 1, 2004 (IMO, 2002). It seems that progress in implementing the Code in European Community ports has been impressive, and all players concerned are doing their best to make this a success. However, in addition to the ISPS code, the European Community has also adopted a *Regulation* on ship and port security (EC, 2004b), which transposes the ISPS code into EU law. Parts of this Regulation are more stringent than the ISPS Code, by making mandatory some parts of the Code that are not mandatory. In addition to this Regulation, there is also a proposal for a specific *Directive on port security* (EC, 2004c), and a plan for a future *Directive on intermodal*

security! The draft EU Directive on port security would complement maritime and ship/port interface security and expand into all security relevant port areas. The future Directive on intermodal security is dedicated to freight transport and aims to cover intra-community trade and also third countries trade in transit on EU territory.

On top of all this, one also needs to add the various bilateral and global US-EU agreements under the “Container Security Initiative” umbrella. And it is worthy to mention that under the “International Port Security Program” of the US Coast Guard (Angelo, 2004), all major ports, including EU ports, will be under intense American scrutiny as regards security. In this author’s opinion, ports may have to take additional measures so as to avoid being put on a certain list. Last but not least, there are voices in the US Congress that call for American certification of foreign ports that deal with the US. This is something that the US Coast Guard opposes, but it cannot be ruled out completely.

In view of these developments, one cannot avoid asking some questions. Perhaps the most naïve of these is, how much all of these measures would really enhance EU port security? To our knowledge, nobody really knows, although the general perception is that security would increase. Also, is there an estimate of the total cost of these measures? A crude estimate of 5-10% of transport costs was offered by some industry circles, which is enormous, but there is no documentation of that figure. Yet another question is if there is an estimate of the impact these measures might have on trade and on the goal to shift cargoes from land to sea. Some EU

port industry people wonder whether ports will be able to operate at all under these measures (Verhoeven, 2004).

Future prospects

With the rejection of the port package, and the continuing uncertainty as to its future, some feel that European ports are currently left with a significant void as to what the institutional and operating environment of their sector will be in the future. This author’s opinion is that as things stand, *maritime security* seems to be the locomotive pulling the overall European maritime transport policy train, and that includes ports. This ‘locomotive’ is designed and driven by good old Uncle Sam. Security aside, things like intermodal efficiency, shifting cargo from land to sea, and opening port services to competition, seem to fall behind. Thus, and for all the noble intentions as regards short sea shipping, ports and intermodality described in high-profile EU transport policy declarations and documents, much confusion and uncertainty exists as to how, when or if these intentions will ever be reached. The lack of cohesion among distinct individual policy areas, the rejection of the port package and the shift of focus to security matters after September 11, surely contribute to such state of affairs.

Our opinion is that setbacks such as the rejection of the port package can produce lessons that will be useful for the future. But this will require politicians and legislators to thoroughly reassess their current ‘patchwork’ *modus operandi*. In our opinion, policies in this area should be *proactive*, that is, developed by carefully assessing *all* of their implications *before* their adoption,

and by listening to the industry stakeholders more than is done today. This did not happen with the port package, and this contributed to its downfall. A continuation of the present ‘top-down’ and ‘put-the-cart-before-the-horse’ policy attitude will likely lead to further over-regulation; inconsistent regulation; and ineffective regulation. If over-regulated ports are affected adversely by a maze of additional requirements, short sea shipping effectiveness is bound to be affected, and that will help road transport increase its share in intra-community transport even further. This will eventually lead to significant and costly correction measures and maybe even to some irreversible problems.

In our opinion, the European port industry is at a critical point, to move ahead proactively and meet the serious challenges it faces, instead of retracting to inertia, complacency and fragmented action. However, this will not happen automatically, and it will definitely require the full energy and cooperation of all stakeholders involved.

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