

European Sea Ports Organisation

ESPO contribution on State Aid

European transport strategy includes on the one hand, a need for transportation as security of supply, competitiveness and mobility and on the other hand, a need to invest in multimodal transport solutions, including ports, ports' access routes and hinterland connections.

The need for **securing European supply** is mentioned in the “WHITE PAPER: Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system”:

- 27. On the coasts, **more and efficient entry points into European markets are needed**, avoiding unnecessary traffic crossing Europe. **Seaports have a major role as logistics centres and require efficient hinterland connections.** Their development is vital to handle increased volumes of freight both by short sea shipping within the EU and with the rest of the world. Inland waterways, where unused potential exists, have to play an increasing role in particular in moving goods to the hinterland and in linking the European seas.
- 41. **The quality, accessibility and reliability of transport services** will gain increasing importance in the coming years, inter alia due to the ageing of the population and the need to promote public transport. Attractive frequencies, comfort, easy access, reliability of services, and intermodal integration are the main characteristics of service quality. The availability of information over travelling time and routing alternatives is equally relevant to ensure **seamless door-to-door mobility, both for passengers and for freight.**

The need for **transparent funding**, as stated in Annex I: List of initiatives in the “WHITE PAPER: Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system”:

- 4. A maritime “Blue Belt” and **market access to ports - Enhance the transparency on ports' financing, clarifying the destination**



of public funding to the different port activities, with a view to avoid any distortion of competition.

Ports are by Danish law required to receive all ship calls. It follows from the Danish Port Act § 5 that ports are obliged to receive all ship calls to the extent that the available space and security considerations permit. Maritime entry points are thus seen as **a service of general economic interest (SGEI)**. The above mentioned points 27 and 41 of the white paper suggest that investments in maritime entry points (port access ways) and hinterland connections are not subject to State aid rules and should therefore have access to state aid for the establishment and operation/maintenance as it has a wider social value. Consequently, it should not be subject to approval by the European Commission.

But port infrastructure is much more than access and defence:

1. **Access and "defence"**. Consists of all infrastructure that provides access to the port from land (access to necessary transport facilities from land) or water (dams, locks, dredging, dredging, icebreaking, light, lighthouse, etc.).
2. **The port's general infrastructure**. Wharves, piers, paved areas, roads, drainage, power transmission, water supply, etc.
3. **The port superstructure**. Buildings, warehouses, offices, cranes (mobile or fixed), service vehicles, etc.
4. **Terminals and project infrastructure**. Below wharves, pontoons, dredging along the quays, the establishment of terminals and access to terminals by rail and by road.

Danish Ports agree that:

1. **General infrastructure that serves the port as a whole (rather than selected undertakings) or that has a wider social value can be supported by public funds.**

When ports are obliged to receive all ship calls this naturally implies that more infrastructure is needed than just waterways and hinterland connections. The port's preparedness to respond to i.e. fire fighting, terrorist attacks, oil spills or coast guard access requires investment in the port's general infrastructure as mentioned in the above definition and are seen as **a service of general economic interest (SGEI)**. Projects should have access to State aid for the establishment and operation/maintenance, but some types of general infrastructure promotes fewer players involved, this should be linked with guidance/clarification from the Commission and not a case by case evaluation.

Danish Ports support that:

- 2. Public funding that qualifies as state aid according to article 107 (1) is present in the port sector due to significant funding gaps in investments in economic infrastructure . State aid is also present in the framework of TEN-T, cohesion or other EU funds, for the contribution coming from national sources. Under these circumstances, there is a need to clarify the overall framework/possibilities for the port sector of receiving state aid.**

Danish Ports support that:

- 3. The Port sector would benefit if the requirement of notification of investments to the European Commission could be reduced/streamlined. (Including a new de minimis threshold and criteria to include ports in GBER)**

All four above mentioned types of infrastructure should have access to State aid for the establishment and operation/maintenance, but when the port infrastructure promotes fewer players, this should be decided by European Commission. The following analysis can be set up to evaluate the effect of aid for port investments:

- 1. The aid must be granted by the State or through State resources**
- 2. The companies awarded state aid, must obtain an advantage they would not obtain on normal commercial terms**
- 3. The aid must be granted to certain undertakings or productions, i.e. the scheme has to be selective and not general**
- 4. The aid distorts or threatens to distort competition**
- 5. The aid must have an effect on trade**

In the review of the five criteria underlying the assessment of State aid not all five criteria are necessarily met. If it is judged that the awarded aid is State aid, this is not illegal under the Court of Justice of the European Union, but must be notified to the European Commission.

Kind regards,
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