

PORTS IN THE FRAMEWORK OF EU TRANSPORT POLICY¹

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General

1. European ports, with the overwhelming predominance of those located in the North Sea, handle approximately 2.5 billion tons of cargo per year. Around 70 % of this consists of deep-sea traffic and 30 % of intra-European trade. In addition, ferries carry more than 100 million passengers each year², providing essential connections to peripheral countries and islands and contributing to the development of the tourism industry.

Table 1: Port Traffic and Short Sea Shipping in the EU

	(million tons)		
	1985	1990	1992
<i>Goods Loaded</i>			
▪ Intra-EU	203.8	230.3	241.8
▪ Total	517.6	536.3	564.8
<i>Goods Unloaded</i>			
▪ Intra-EU	209.9	233.1	272.2
▪ Total	1,131.4	1,316.1	1,360.9
Total	1,649.0	1,852.4	1,925.7

Source: Erasmus University Rotterdam

2. Profound trends in trade liberalisation and globalisation of the world economy are having significant impacts on international seaborne transport and ports, with long term effects not easily predictable. These trends have drastically weakened the link between manufacturing and the location of factors of production and have stimulated a most noticeable shift in manufacturing activities towards countries with a comparative advantage.
3. In their turn, too, developments in international transport and communication technologies have been instrumental in shaping these processes. Containerisation and multimodal integrated transport have revolutionised trading arrangements of value-added goods and have given manufacturers and shippers more control and choice over the "production-transport-distribution" chain. In addition, the increased reliability and accuracy of international transport enables manufacturing industries to adopt flexible *Just-in-Time* and *Make-to-Order* production technologies that *inter alia*, allow them to cope with the vagaries and unpredictability of the seasonal, business and trade cycles and plan business development in a more cost effective way. Transport efficiency becomes also necessary due to the very same nature of value-added goods whose increasing sophistication requires fast transit times from origin to destination in order to increase traders' turnover and minimise inventory costs.

¹ This is an earlier and expanded version of the European Commission's *Green Paper on Ports and Maritime Infrastructure*, prepared by the author as a member of Commissioner Kinnock's Group, with input from all members of the Group. The paper does not commit the European Commission and readers are advised to refer to the final version of the Green Paper as published by the EC.

² According to estimates of the European Community Shipowners' Associations

4. The capital-intensity of modern shipping –as a result of the need to achieve economies of scale- and the need to offer a service of higher frequency have led to considerable capital concentration in the industry. Carriers are forming new alliances and logistics companies, often linked to European distribution services. Such rationalisation of service requires carriers to limit their ports of call on a few large hubs. However, concentration of cargo in a limited number of “mega-ports” might entail loss of flexibility and competition while, at the same time, it could lead to an increase in the use of road transport and thus be counterproductive to a policy of shifting freight transport from road to sea.
5. Undoubtedly, further trade liberalisation will create new and stronger trade flows and demand for shipping services. The “type” of shipping, however, is not unambiguously foreseen by industry observers. Despite conventional wisdom that sees a continuing increase in ship sizes, a number of external long term trends point to the direction of a possible increase in the market share of smaller ships targeting more immediate hinterlands. These trends include world-wide port development (making direct port calls financially attractive), regionalisation of trade (involving shorter distances) and diseconomies of scale in major ports. Two additional trends pointing to this direction are the development of transport infrastructure in peripheral Europe and a future road pricing policy not favouring long-distance haulage. Their effect could be a more balanced traffic flow and port development in Europe.
6. Whatever the likely future scenario, one thing remains: Europe’s export competitiveness in a global economy increasingly depends on efficient and cost effective transport and port systems. Furthermore, the substantial emphasis the Union attributes to the development of trans-European transport networks, aiming at closer economic and social integration, creation of employment, growth, and sustainable mobility, charges ports with an additional role and responsibility. Indeed, the development of the Union’s multimodal network would be incomplete without including its interconnection points.
7. The European Union has certain obligations under the Treaties, that have special relevance to the port sector. Firstly, the Treaty of Rome determines the rules governing competition, State aid, freedom to provide services and the right of establishment. Furthermore, the Maastricht Treaty has laid down the rules governing the development of a trans-European transport network, aimed at serving the objectives of the single market, i.e. to strengthen economic and social cohesion and to link island, landlocked and peripheral regions of the Union with its more central areas.
8. The Commission, therefore, finds it important to promote the port sector through a number of positive measures and actions aimed at improving its overall performance. These include actions to improve port efficiency, remove harmful obstacles to trade and promote improvements in port and related infrastructure so that port efficiency reaches a high standard throughout the Community.

The Role of Ports in Trans-European Transport Networks

9. The Treaty on the European Union governs the EU’s work in developing the trans-European transport networks. It requires the EU to promote the interconnection and interoperability of national networks and access to them, taking into account the need to link island, landlocked and peripheral regions of the Union with its more central areas. The aim is to enable citizens of the Union, economic operators and regional and local communities to derive full benefit from the internal market.
10. However, interconnection, interoperability and TETN optimisation in general cannot be achieved if ports are not included in the equation as the crucial links of a closed (i.e.

total) European transport system. Considering European ports as a whole and as the international interface of the European logistical network is consistent with the approach taken by the Commission in its White Book on the future development of the common transport policy.³ In fact, while taking note of existing inefficiencies and discordances, the White Book provides for a global approach to the problem. It aims at a more balanced modal development of transport, allowing users a greater freedom of choice; at a more balanced distribution among regions of benefits resulting from infrastructure development; at improving the efficiency of companies operating in this sector; at increased safety and attention to the problems of environmental protection. All this, while taking social problems related to the sector's employment levels into account.

11. In brief, the objectives of including ports in the TENs strategy can be summarised as:

- ◇ Encourage growth of inter/intra EU trade and more specifically trade with the Community's nearest neighbours (EFTA, Central and Eastern Europe, Mediterranean and North Africa);
- ◇ Overcome congestion of the main land-corridors and minimise the external costs of European transport by contributing to the development of combined transport;
- ◇ Improve the accessibility of peripheral regions and strengthen the economic and social cohesion within the Community by enhancing the Community's internal maritime links, paying particular attention to island and peripheral regions.

Connections to neighbouring third countries

12. The Treaty and the TEN Guidelines permit cooperation with neighbouring countries in order to promote projects of mutual interest and ensure the interoperability of networks at a pan-European level. One of the aims is to connect TENs with networks outside the Union, particularly with Central and Eastern Europe and the Mediterranean area.

13. Given the opportunities and initiatives for increased trade between the EU and neighbouring third countries, it is a desirable objective to seek standards in these ports, particularly those involved in major trade flows with the EU, which are comparable to standards found in the Union. In general, this means continuing the process of rehabilitation and modernisation, the implementation of basic standards concerning safety and environmental protection and, where necessary, improving security, monitoring and registration arrangements for cargo.

14. The EU has also been trying to ensure that the increased trade prospects with the Baltic Sea countries would not be hampered by logistic restrictions in ports. It is cooperating with these countries in maritime and port projects and it is actively encouraging cooperation between the countries themselves. A specialised working group meets regularly to monitor progress. Equally, the MEDA programme recently adopted by the EU allows for cooperation and project financing in Mediterranean countries. Practical work has already started with maritime issues being at the forefront of cooperation.

15. Furthermore, in the framework of the Uruguay Round, the Community has been instrumental, at an early stage of the negotiations, in ensuring that talks on the liberalisation of maritime transport included, as an integral part, rules on the use of ports.

16. The GATS negotiations were suspended without conclusion⁴ to be resumed in the year 2000. However, it is now accepted that a liberalised maritime transport régime will have

³ *The Future Development of the Common Transport Policy: A Global Approach to the Construction of the Community Framework for Sustainable Mobility*. COM(92)494 final.

⁴ The WTO Negotiating Group on Maritime Transport Services suspended its work on 28/6/1996. It nevertheless adopted a so-called "peace" clause under which countries agree not to apply any measures affecting trade in maritime transport services except in response to measures applied by other countries. This "peace" clause covers

to guarantee national treatment of non-national operators in ports, in particular with regard to the use of port infrastructure, fees and charges, use of facilities, the assignment of berths as well as the non-discriminatory use of auxiliary services.

17. Although the EU will continue to seek agreement on further liberalisation in the context of the WTO, it must in the meantime pursue its interests, where necessary. It may thus prove appropriate to do so bilaterally in contacts with third countries, as was done in the past where bilateral contacts resulted in a number of changes in third countries' port practices.

The Nodes of Intermodality

18. Intermodality is an essential component of the European Union's Common Transport Policy for sustainable mobility. Its objective is to develop a framework for an optimal integration of different modes and utilisation of their capacities, so as to enable an efficient and cost-effective use of the transport system through seamless, customer-oriented door-to-door services whilst favouring innovation and competition between transport operators.⁵
19. Ports are crucial connecting points in intermodal transport, transferring goods and passengers between maritime and land-based modes of transport. Higher port efficiency thus contributes to the integration of modes in a single system, allowing better use of rail, inland and sea transport; modes that by themselves do not always allow door-to-door delivery.
20. Seamless transport systems necessitate open access to (port) infrastructure to all licensed operators. The Commission proposed the creation of trans-European Rail Freight Freeways, characterised by open access and the removal of a wide range of obstacles to international traffic.⁶ The idea is being implemented by railway companies, Member States and shippers and the first freeways are expected to become operational before the end of 1997. As the freeways are likely to become an important element in intermodal transport, the Commission will give priority to their development.⁷
21. One of the main requirements of intermodality, and objective in the development of the TENs, is that transport modes are physically linked. However, successful intermodality is dependent on a number of equally important factors and difficulties that have to be identified and addressed in the future. For example, the use of more than one transport modes can result in additional transfer costs, reduced reliability and more complex administrative procedures. The use of modern information systems is crucial in this respect. Such systems are already in use in the larger European ports but are still an important missing link in other parts of the Union. The Commission is supporting the development of such systems in the framework of its Research and Development Programme (MARTRANS, BOPCOM). The aim for future projects in this field will be to ensure interoperability and interconnectivity between such systems. There might also be a need to integrate EDI (electronic data interchange), AEI (automatic equipment identification) and a terminal monitoring and guiding system in one common information system in order to optimise communication between the port and its customers, reduce paper requirements and improve the service and management of ports.

maritime transport as it was negotiated; it therefore covers access to and use of port and auxiliary services.

⁵ *Intermodality and Intermodal Freight Transport in the European Union; A Systems Approach to Freight Transport*. Commission Communication, COM(97)243 final. Brussels, 29.05.97.

⁶ *A Strategy for Revitalising the Community's Railways*. European Commission White Paper, COM(96)421 final, 30.07.96 and COM(96)421/2 final, June 1996.

⁷ *Trans-European Rail Freight Freeways*, Commission Communication, COM(97)242 final, 29.05.97.

Ports and Development of Short Sea Shipping in Europe

22. The promotion of environmentally friendly modes of transport –Short Sea Shipping in particular- and their effective integration in multimodal transport chains and networks is a central objective in the Union’s transport policy. However, despite the increasing turnover of European ports, intra-European maritime traffic has not as yet been able to demonstrate a distinctive increase in its market share *vis a vis* that of the road transport sector. A number of factors can account for this including terminal costs and turnaround times, lack of appropriate infrastructure, institutional rigidities in ports, adaptability to multimodal transport systems and lack of information to shippers.
23. In its Communication on Short Sea Shipping⁸, the Commission set out a framework of initiatives necessary to promote short sea services in Europe, stressing the need for improved port efficiency. An important issue in this respect has been the complexity of documentary and procedural requirements in ports, given that a number of cumbersome procedures and practices still exist, mostly beyond the port’s own control, that impose significant costs on commercial operators and put maritime transport at a disadvantage compared to other modes.
24. The Commission is currently undertaking a fact-finding study to identify requirements in ports that affect maritime trade in Europe and compare them with those prevailing in inland transport. Customs requirements and the efficiency of customs authorities in processing documentation are particularly being addressed. In this context, implementation of EDI is seen as an important tool to improve the flow of information between custom authorities and the other parties in the transport chain. If needed, the Commission will recommend actions aimed at the streamlining of procedures in maritime transport.
25. To evaluate the market potential and competitiveness of Short Sea Shipping in certain specific trade corridors, the Commission is considering ways of compiling relevant information, that will also be to the benefit of ports and maritime industries in general. Action in this area is already being undertaken in the framework of the *concerted action on Short Sea Shipping* R&D programme, sponsored by the Commission, and it is also the basis of the PACT projects currently underway.
26. Co-operation among all parties in the transport chain is necessary if short sea operators are to be effectively and competitively engaged in door-to-door transport solutions. Notwithstanding commercial considerations, co-operation among ports should be encouraged, particularly in the area of telematics, the streamlining of procedures and the exchange of know-how. For that reason, and in the context of TENs, priority will be given to projects which entail co-operation between two or more ports.
27. Ports should also be encouraged to play an active role in the promotion of Short Sea Shipping and participate actively in maritime roundtables, such as those established in the framework of the Maritime Industries Forum.
28. Moreover, as port costs are essential to the development of Short Sea Shipping, port authorities should be encouraged to consider the granting of rebates to vessels according to frequency, volume of cargo and type of service rendered. In a similar manner, and to the extent possible, charges for port services should in principle be open to negotiation on a local level.

⁸ *The Development of Short Sea Shipping in Europe: Prospects and Challenges*. COM(95)317, 05.06.95.

29. However, a factor that could be instrumental in boosting Short Sea Shipping in Europe is a cost recovery pricing policy in road transport that would *inter alia* internalize its external costs. Such a policy, already suggested by the Commission in its Green Paper *Towards a Fair and Efficient Pricing in Transport*⁹, is expected to make competition among ports and transport systems fairer and more efficient, leading to a more balanced distribution of traffic across Europe. However, the Green Paper takes a differentiated approach to road-pricing with respect to peripheral regions, as road haulage there is the predominant mode of transport and pricing policies aimed at shifting cargo from roads may have adverse effects on development prospects.¹⁰

The EU Regional and Cohesion Policies with Respect to Ports

30. The Commission's White Paper on the future development of the common transport policy¹¹ laid down a new vision for transport policy following the principle of sustainable mobility, i.e. a strategy that acknowledges the need for a more balanced transport system that would fulfil its economic and social role while, at the same time, containing its effect on the environment. The overall objective of such an approach, as clearly described by the European Parliament¹², is to *...promote sustainable, efficient transport systems which meet the economic, social, environmental and safety needs of European citizens, help reduce regional disparities and enable European business to compete effectively in world markets...*
31. Also, Article 130 of the Treaty refers to the role of the networks in promoting harmonious development and in strengthening economic and social cohesion. This is so as optimization of TENs is likely to reduce transport costs and the perception of "distance", at least in the long-run, and thus lead to important location decisions causing production to relocate to peripheral regions.¹³ For those reasons, the Treaty provides for the establishment of a Cohesion Fund, to support transport and environmental projects, in Member States that qualify. In addition, as all Cohesion Fund countries and virtually all areas covered by the Structural Fund provisions are on the periphery of the EU, having substantial coastlines and often many islands, a well-integrated maritime sector will contribute fully to the development of the single market and the further steps envisaged in the Treaty.
32. However, ports in these regions have to be adequately prepared to take on the challenge. Otherwise, the economic and social benefits of greater cohesion can be easily withered away by peripheral ports that are generally characterised by lower levels of efficiency, mainly as a result of under-investment. Efficiency improvements will be necessary to ensure that existing and future facilities are used as effectively as possible, enable ports take their share in the increased traffic of the single market and allow them to play their proper part in a more balanced distribution of traffic. It should be kept in mind that the lack of facilities at one end of the maritime chain can eventually damage the overall efficiency and image of maritime transport. The aim is thus to bring ports at both "ends" up to the highest possible standards, to the benefit of the overall port system.
33. An approach as the one envisaged above should take into account the significant role of ports as *nuclei* of regional development in the less developed regions of the Union, the

⁹ *Towards Fair and Efficient Pricing in Transport: Policy Options for Internalising the External Costs of Transport in the European Union*. COM(95)691, final.

¹⁰ see also *First Report on Economic and Social Cohesion*. European Commission, Luxembourg, 1996 (Preliminary Edition).

¹¹ op. cit. 3

¹² *Towards a European Wide Transport Policy; A Set of Common Principles*. European Parliament, Third Pan-European Transport Conference, Helsinki, 23-25 June 1997, p.5 (Annex).

¹³ op. cit. 10

strong commitment of the latter to greater economic and social cohesion, and the importance of adequate PSO¹⁴ provisions. Indeed, PSOs are essential in order to help reconcile the highly desirable, but often long-term, effects of liberalisation and competition with the inevitably uncertain and, therefore, risky nature of investment in ports. Cohesion-oriented policies, which have a long-term time-horizon, demand continuity and the existence of regular services over an extended period of time which is not always guaranteed in low volume, highly seasonal markets. Public provision in the poorer, less developed regions can, therefore, help balance the desirable effects of liberalisation on efficiency with the need for adequate services to be provided to all areas at an affordable price.¹⁵

34. The Community has provided considerable support to port development in the form of grants from Community funds especially through the Cohesion and Structural funds. In the case of Structural Funds, the relevant instrument for ports is the European Regional Development Fund (ERDF). A number of objectives have been established for purposes of fund distribution: Those pertinent to transport infrastructure development are the structural adjustment of less developed regions (Objective 1); development of regions affected by industrial decline (Objective 2); and development of rural areas (Objective 5b). Transport related resources of the ERDF amount to <?> billion ECU in the current programming period (1994-99). The Objective 1 areas, which received <?>, are the most significant recipient of funds as regards ports. In addition to the ERDF, structural funds are also available to ports in eligible areas under the INTERREG II C, which promotes cooperation between and within EU regions.
35. The second major funding instrument of the Community is the Cohesion Fund. In the period 1993-96, a total of 2.1 billion ECU was allocated to the transport sector, 3.4% (74.4 million ECU) of which funded port infrastructure projects. Finally, the European Investment Bank provides loans to finance infrastructure that contributes to regional development; the bulk of its lending activity in the 1991-95 period –that is 44 billion ECU- went to the eligible areas (i.e. Objectives 1, 2 and 5b). Most of the loans from the EIB have been allocated to infrastructure projects including the trans-European Transport Network.
36. From a transport perspective, these funds should serve such priorities as: better integration of ports into TENs; improving access to port hinterland; and refurbishing the infrastructure inside the port area. Exceptionally, projects may include investment in superstructure and mobile assets (e.g. terminals buildings, cranes), provided these remain an integral part of a larger infrastructure project and increase the overall benefit of the investment.

The Role of Ports in Maritime Safety and the Protection of the Environment

37. Ports are the most obvious points where compliance to international or EC maritime safety regulations can best be checked and uniformly enforced. The Community's maritime safety policy, aimed at the elimination of sub-standard shipping through the proper enforcement of international legislation, is primarily focused on ships. However, the policy has also a direct impact on ports, as it requires them to co-operate in the implementation or enforcement of the legislation¹⁶ and ensure a high level of port services (such as pilotage, mooring and towage) that are intrinsically related to the safety of ships. Equally importantly, the absence

¹⁴ Public Service Obligations

¹⁵ op. cit. 10, p.78

¹⁶ The uniform enforcement of international rules to all ships operating in Community waters is the purpose of Directive 95/21/EC on Port State Control (PSC). The Directive requests port authorities and pilotage services to co-operate by providing relevant information and assist PSC inspectors in detecting and targeting sub-standard ships for priority inspections.

of uniform application of safety rules among ports can lead to distortions of competition and this is an important consideration to be taken into account when examining possible new initiatives in the field of maritime safety.

38. In the area of environmental protection, and in addition to the requirements of international Conventions (particularly MARPOL 73/78), a number of non-mandatory Codes and Resolutions have been issued by IMO. The Community has already started to take measures towards the convergent implementation of these international rules and legislation¹⁷ and port authorities will have to play an essential role.

Environmental impact of port development and operations

39. Infrastructure projects have a negative impact on the environment that has always to be considered through appropriate environmental impact assessment. Ports are often in proximity to populated areas, or areas where particular attention must be given to endangered species. As a result, port development, particularly in densely populated areas, is confronted with special circumstances and constraints. Several Directives are already in place to address this problem and promote environmentally friendly solutions. Among them are Directives on environmental impact assessment and the Wild Birds and Habitats Directive. With assistance from the Commission, the European Seaports Organisation (ESPO) has published a *Code of Conduct*, providing a quality framework for programming action with respect to the protection of the environment within port areas.
40. New technology and more efficient operations should be seen as better options for making the best use of existing facilities instead of providing new ones. In areas with a large number of ports, better co-ordination and specialisation among them could also reduce the demand for new port development. Finally, demand driven decisions and higher competition between and within ports can also help in this direction, as it will reduce the risk of overcapacity and foster efficiency in ports.

FINANCING OF INFRASTRUCTURE AND COST RECOVERY IN PORTS

General

41. The administration and financing of ports in Europe -as of course in other parts of the world- principally falls under two philosophies: that which sees ports indiscriminately as business undertakings that ought to recover their costs from port users that benefit directly, and the philosophy that sees ports as trade facilitators and growth-poles to regional and national development, and thus as sectors producing a service of general economic interest that ought to be provided by the public sector and principally paid for by the general taxpayer. The arguments for and against each approach abound, often giving ground to intensive debate, while the overall picture is far from being conclusive.
42. Furthermore, certain port infrastructures, such for example breakwaters and navigational aids, have traditionally been regarded as public goods¹⁸, while a number of port services (mainly the nautical-technical ones described below) may carry important public service obligations, due to their relation with the safety of ports.

¹⁷ Legislation has been adopted for notification requirements for ships carrying dangerous or polluting goods, (ii) promotion of environmentally friendly oil tankers (SBT Regulation) and (iii) the Commission services are developing a draft Directive on the use of reception facilities in European ports.

¹⁸ in the sense that (i) no particular user can be excluded from their use if he/she is not prepared to share in the costs of their production; (ii) the consumption of user A does not affect that of user B; and (iii) the cost of their production does not vary with use.

43. Thus, as regards ownership and organisation, ports may be state-owned, municipal, private or owned and run in some other way; they may be government bodies, have close links with the local public authorities or be autonomous. Whatever the case, however, ports are subject to considerable regulation and supervision by either national or local authorities.
44. The same diversity of norms exists, as a result, with regard to the financing of port infrastructure: it can be wholly funded by the State, the private sector or by a mix of both sources of finance at varying degrees of participation. A distinctive trend, however, has emerged whereby port activities of a predominantly commercial nature –such as cargo handling and the financing of port superstructure- are increasingly becoming the concern of the private sector, while ports tend to restrict themselves to their “landlord” role and be involved in the operation and finance of those facilities and services that are essential for the safe and efficient operation of the port. The “comprehensive” or “service” model of port organisation, where the port authority functions also as port operator and employer of port workers, is becoming uncommon.

Historical Perspective on the Changing Role of Ports

45. In Europe as in many other parts in the world, ports have traditionally been seen by governments as growth-poles and fulcrums of national and regional development.¹⁹ As a matter of fact, ports were often used as instruments of regional planning. Many Member States have done so by steering state investment, through regional policies, towards ports and port-related infrastructure, in order to encourage national development.²⁰ In this role, ports generate substantial employment and numerous benefits, for the country as a whole, some of them not necessarily producing visible financial rewards for the ports concerned. However, as government policies usually go beyond considerations of short-term financial profitability and towards the maximisation of long-term *economic benefit* and general welfare, state intervention has often been justified on the grounds of these “not solely commercial” objectives of ports.
46. Port capacity and its spatial characteristics are thus often determined by national priorities aiming at the spatial reorganisation of the entire national economy and investments in port and related infrastructure, such as new terminals, docks, deep-water quays, major locks access channels, etc. is still centrally funded in many Member States, considered to be serving the collective benefit of the nation. It is perhaps worth mentioning at this point that, for instance in Japan, apart from the direct financial returns of port operations, port development is appraised on the basis of its contribution to the social and economic development of the region and the nation. Port development plans are, thus, adjusted to and included in the country's regional development plans, while ports are managed and administered by public sector bodies.

¹⁹ characteristic examples of this approach can be found in the Maritime Industrial Development Areas (MIDA) of Rotterdam and Antwerp.

²⁰ A classic example of such as policy was the Mezzogiorno in Italy, considered by many as a model of spatial reorganisation of economic development. In the United Kingdom, this task was the responsibility of the National Ports Council, established in 1964 and abolished in 1981.

Table 2: Direct and Indirect Employment in Selected Ports in the EU

(Number of employees)

	<i>Direct</i>	<i>Indirect</i>	<i>Total</i>
Hamburg	95,100	47,500	142,600
Flemish Ports	22,300	22,500	44,800
Rotterdam	63,000	35,000	98,000

Source: Erasmus University Rotterdam

Port Competition

47. However relevant such a national approach to port development may have been in the earlier stages of economic development in Europe –or for some Member States even now– the continuing adherence to it nowadays may give rise to legitimate concerns. Indeed, during earlier periods, general cargo traffic was less containerized, regional port competition less of an issue, and ports were comprising a lot of labour intensive activities generating considerable direct added-value.
48. However, the completion of the internal market and the existence and further development of superior inland transport networks across Europe has intensified competition among ports significantly, particularly competition aimed at attracting unitised transshipment cargo. Especially the latter type of competition, combined with automated labour-saving cargo handling systems reduces the direct added-value of port activities, while the benefits of port investments and their impacts can be easily dissipated from the country in question to the final consignor/consignee. This issue causes considerable concern to governments contemplating the continuation of public funding of port projects, as it deprives them of the basic *rationale* of doing so, namely, that the port provides a service of general economic interest.
49. At the same time, disappearing national (captive) hinterlands mean that the pricing, port development and financing decisions of a particular port may have marked effects on its neighbours, nationally and internationally. This raises the relevance and desirability of a more coordinated approach to port development at pan-European level aimed, *inter alia*, at ensuring that ports compete on sound commercial grounds, both for existing and new trade, and at the same time highlighting the crucial role of ports in the optimisation of trans-European transport networks.
50. However, as ports are nodes in an increasingly door-to-door transport system, competition and the desirability of a more coordinated approach to port development at a pan-European level²¹ cannot be *a priori* ascertained without due regard to the investment and pricing policies of other modes and infrastructure, particularly those of direct impact on the operation of ports. For example, presently, inter-port competition is affected by road transport pricing policies favouring long-hauls and not internalising the external (social) costs of transport. A “user pays” policy for road transport, as suggested by the Commission²², could re-direct traffic and lead to a different distribution of cargo flows among European ports. Such considerations necessitate a phased step-by-step approach to policy, taking into account existing equilibria.

²¹ e.g. through the identification and funding of projects of common interest.

²² *op. cit.* 9

Identification of Projects of Common Interest and Maps of Ports

51. Among others, the Treaty of the European Union requires the establishment of guidelines which cover objectives and broad lines of measures and which identify “projects of common interest”. The EU may provide support to such projects from the TEN budget line (mainly for feasibility studies) and from the Cohesion Fund (to countries that are eligible). The underlying philosophy of TENs is to provide the framework of an optimized pan-European transport system to be used by Member States as a guide for the development of their infrastructure. Funding for the latter, however, has to be found by Member States themselves, either centrally or through public/private partnerships.
52. The Commission is well aware of the fact that port development in many Member States is driven by demand and the whatever assistance it thus provides in the framework of TENs is by no means meant to superimpose a centrally determined system of port development in Europe, or allocate roles to specific ports. Such assistance is only meant to ensure a “natural” flow of traffic across Europe –to the benefit of the consumer- and to contribute so that the present situation in European transport, largely the result of past investments that were not market driven, does not continue to proliferate road transport congestion. The aim is to promote physical and managerial improvements so that transfers between land and maritime transport are seamless, and to establish efficient intermodal transport chains which facilitate trade, promote Short Sea Shipping and strengthen economic and social cohesion. Thus, projects enhancing the functionality and optimization of TENs as well as ones aiming at diverting traffic from road to sea, and thus remove bottlenecks and provide missing links, could be considered as serving the “common (European) interest”.
53. The same philosophy applies to the requirement for the preparation of a map of ports. The Guidelines for the development of TENs, setting out the priorities of the EU’s transport infrastructure policy, did not, in the first place, include a map of ports. However, the port element is now being revised, following a request from the Parliament and the Council, in order to include a map of ports and a revision of the criteria for identifying projects of common interest.
54. Again, the aim of a map of ports is by no means to allocate roles among ports but to present port traffic in relation to the served industrial, consumption and population centres. Something like this would undoubtedly demonstrate the significant gains and rewards of extended hinterlands for ports that have achieved a high level of efficiency. This can definitely set an effective example for others to follow (The success of the Port of Rotterdam, not an uncharacteristic one in this respect among North Sea ports, can be evidenced from Table 3).

Table 3: Road Freight Traffic from/to the Port of Rotterdam

(selected countries, in 1000 tons, 1995)

	<i>A</i>	<i>DK</i>	<i>E</i>	<i>GR</i>	<i>I</i>	<i>S</i>
Incoming	71	11	52	1	147	35
Outgoing	117	26	130	18	184	58

Source: Erasmus University Rotterdam

55. When drawing up a map of ports special attention should be given to possible distortion of competition between ports. A map of ports should therefore be based on objective criteria. Furthermore, it must take into account that one of the aims of EU transport policy is to promote Short Sea Shipping and that the maritime element of the network often ensures important links to peripheral areas and islands. This would imply including a

wide range of ports in all parts of the Union. Additionally, it is important to ensure that justified port projects, even in smaller ports in remote areas of the Union, not identified in the maps, are not excluded from funding (see map in annex x). In the future, the Commission will consider if it would be appropriate to introduce additional criteria for the identification of ports, such as a classification of ports, that could add value to the multimodal approach.

Finance and Charging of Port Infrastructure

56. The trend towards greater private sector participation in ports can be explained by both actual economic considerations and by a noticeable shift in attitude regarding the function and role of ports. Firstly, the need for projects to be economically viable is seen as a necessary discipline in circumstances where resources for infrastructure development have proved to be scarce and when the involvement of the private sector, either on its own or in the form of public/private partnerships, is accepted as a growing and desirable development, recognised also in the TEN Guidelines.
57. Second, the fact that ports are used mostly for commercial ends, the often scant diversification of users they serve and the typically private organisational structures they adopt differentiates them from the pure public goods to which they had often been likened.²³ Thus, the port industry is increasingly viewed as one moving from a situation where predominantly public capital was used to provide common user facilities to one where capital is being used to provide terminals which are designed to serve the logistics requirements of more narrowly defined groups of users. Indeed, they may be designed to serve the needs of a few firms or even just one. In such a way, the “general economic interest” argument loses weight, leading to a more commercial attitude towards pricing and infrastructure funding.
58. These pragmatic developments have also led the European Parliament to assert that, while acknowledging that there are different financing arrangements (i.e. public/private, to varying degrees) in individual ports which need to be respected, there is no substantial difference between investments in port infrastructure and other capital intensive investments in industrial complexes. Therefore, there is no reason for adopting a completely different approach to port investments, and consequently no justification why the direct users should not bear the costs of such investments.²⁴ As a matter of fact, the European Parliament goes even further to point out that the introduction of market principles in infrastructure works would be the most effective remedy to the risk of creating wasteful overcapacity and possible distortions of trade flows between Member States.
59. The general view of the Commission in the past has been that public investment in port infrastructure, including land and maritime access, does not normally constitute State aid in the meaning of Article 92 of the Treaty in so far as the infrastructure is accessible to all on a normal, non-discriminatory basis.²⁵ This investment has been considered by the Commission as comprising general measures and expenses incurred by the State in the framework of its responsibilities in physical planning that favours the nation by and large.
60. However, European integration and the resulting intensified competition among ports in different Member States does not always allow this view to be unquestionably accepted as a universal rule. This is the more so given that the public funding of port infrastructure

²³ such as defence, education, justice, environmental protection, etc.

²⁴ *European Sea Port Policy*. European Parliament, Directorate General for Research, Transport Series E-1, 1993.

²⁵ However, also in cases where particular investments may benefit only certain users, exemptions are possible, e.g. for regional development purposes under Article 92.3 of the EC Treaty.

and the cost recovery of port services are two different things. Although in certain instances infrastructure can and perhaps should be funded by public money due to a variety of legal, economic and administrative reasons, this does not mean that this investment should be forgiven and not attempted to be at least partially recovered from users who directly benefit, regardless of how the investment was funded.

61. In this respect, reference can be made to the EC's position that, as a general rule and in order to avoid distortions of competition and choice within and between modes, ... *all transport users should pay the full cost, internal and external, of the transport services they consume, even if these costs are in some cases paid by society to assist those in need...* This, in addition to the above views of the European Parliament, reaffirms the Commission's earlier assertion²⁶ that ... *it would be desirable port charges to reflect the commercial cost of capital invested in infrastructure in order to approximate the competition conditions of ports...* Finally, the Commission Green Paper on Fair and Efficient Pricing²⁷ maintained that infrastructure charges should (i) be linked as much as possible to actual costs at the level of the individual user; (ii) be recovered in full; and (iii) be transparent.
62. All the above tendencies in Community thought point to the emergence of a new approach for the pricing of port infrastructure. Broadly speaking, port infrastructure should be priced in such a way as to make investments economically viable²⁸ and, implicit to this, users should bear the real costs of the port services they consume.
63. Although the application of this principle to the port industry is of particular significance in terms of higher efficiency, rationalization of investments and examination of State aid measures, it may at the same time have a number of far-reaching ramifications that have to be carefully studied and monitored. They may include such issues as the effect of the policy on port charges and final consumer prices; ocean freight rates and short-sea-shipping; spatial decisions of companies; re-distribution of existing traffic among ports, etc.
64. In addition, it should be also kept in mind that a great number of European ports are located in less developed and peripheral areas or on islands. Often, these ports represent the only link to the rest of the Union and constitute the fulcrum of significant economic activity in their region. They may thus be important parameters in the Union's Cohesion policies and the application of the cost recovery principle in such cases, if at all desirable, could create considerable difficulties.
65. In any case, the interdependence of transport modes and related infrastructure—some of them falling under their own legal regimes and policies—necessitates not only a consistent step-by-step approach to the pricing of port infrastructure—starting from investments within the port— but also the provision of ample time for ports to adjust. The method of cost recovery, in that case, should be left to Member States, on the basis of the principle of subsidiarity. The effect of this charging regime on two specific types of port infrastructure—maritime access and navigational aids—is of particular interest in this context and it is thus briefly examined in the following paragraphs.

²⁶ *General Study of State aid in the Port Sector*. No VII/103/89.

²⁷ *Op. cit.* 9

²⁸ Economic viability is, however, to be distinguished from financial viability of private investment, as the former usually entails considerations such as creation of employment, income distribution, regional disparities, etc. Given the diversity of port financing regimes across the Union as well as the different conceptions as regards the role, functions and institutional framework of ports, the future development of a consistent set of criteria for the evaluation of the economic viability of port investments would be desirable.

Maritime access

66. A number of European ports, mainly those of the North Sea, are located on river estuaries or are river ports subject to considerable siltation. The provision of adequate maritime access in these ports requires substantial yearly outlays for dredging, which presently are in most cases publicly funded. Although there is no *a priori* reason why maritime access should be treated any different than other port infrastructure²⁹, the unqualified and untimely application of the user-pays principle in this case would gravely disadvantage a number of ports, some of which important gateways to European trade.

Navigational Aids

67. Aids to navigation have traditionally been used in economic theory as the most characteristic examples of a public good.³⁰ Apart from the typical lighthouses, buoys, etc., modern navigational aids in busy seaways and along dangerous or environmentally sensitive coasts include the development of radio-navigation systems (e.g. LORAN-C, GNSS), the physical infrastructure needed to support VTS or VTMS, and systems of mandatory ship-routing and ship-reporting (e.g. EUROREP Directive).
68. In several cases, the safety or commercial interests of both local and transiting traffic are better served by systems that transcend national boundaries and, ideally, could be developed on a regional basis.³¹ The more so when the importance of several European seaways to world trade and the increasing sophistication and capital intensity of such systems would make it unfair to leave the expense of their implementation solely to the coastal states concerned, since all transiting traffic and regional users (e.g. fishing vessels) would eventually benefit. The risk of doing so is that some necessary aids might not be provided or that states providing them may try to recover costs in a non-optimal way. Obviously, coastal aids to navigation benefit a traffic which, for cost recovery purposes, is “captive” only if systems are viewed on a large regional (e.g. European) basis.
69. The need for the development of a Commission proposal laying down both the principles for a charging system(s), aimed at the recovery of the development and investment costs of such aids, and a mechanism to equitably share the financial burden with users, was clearly identified in the Commission Communication “*A common Policy on safe seas*” (points 101 to 114). <ref, in footnote>
70. As far as local aids to navigation are concerned, particularly those associated with the approaches to ports, the principal beneficiaries are local port users. The development and implementation of navigational aids in port areas is therefore closely related to investments in or near the port and, to a large extent, they may be regarded as the responsibility of the competent (port) authority. Cost recovery of such infrastructure could thus continue to be dealt with by national or local bodies, viewed either as a charge to be fully met by the competent authority or, as in most Member States, to be included in port dues. At any rate, here too, the “user-pays” principle will have to be considered in the framework of EC legislation.

²⁹ particularly when approach channels are provided at such water depth that, although open to all, are really meant for a small number of easily identifiable users.

³⁰for a definition see footnote 18.

³¹ in the context of the development of a trans-European network of vessel traffic management and information system (VTMIS), the Community has already granted financial support to a number of port or coastal vessel traffic services in the peripheral regions of the Community. In addition, with the European Permanent Traffic Observatory (EPTO) project, a tool has been made available by the Commission to any port or VTS in the Community for the systematic analysis of local traffic conditions in the port area and their improvement. The extension of EPTO to a larger number of ports would greatly enhance its potential positive effects. Finally, the Commission is examining harmonisation measures for VTSs, concentrating on minimum performance requirements for VTS equipment (interfaces between VTS) and harmonised procedures to improve ship-shore communication.

Application of the State Aid Provisions of the EC Treaty to the Port Sector

71. In the highly competitive environment of an integrated Europe, state-aids can have far-reaching ramifications and are increasingly becoming one of the central issues in the industrial and competition policies of the EU. Among others, the issue has also been addressed in the White Book on the future development of the common transport policy³², according to which *...the opening up of transport markets to more competition as a result of the 1992 programme means that greater attention has to be paid to subsidies which could unfairly advantage particular operators...*
72. Obviously, if a port receives public financial support, it might be in a position to offer actual or potential users more favourable conditions than its competitors, thus leading to a situation where the natural flow of trade is distorted. As ports play a vital linking role between land-based and maritime transport, the effect of such a distortion may be very far-reaching.
73. State aid to ports can take different forms, some of them easily recognizable some not. State aid is easily recognizable when granted as direct subsidies, such as the offsetting of operating losses, but it may also be indirect, and thus less explicit, when, for example, it takes the form of leasing land areas or provision of government loans under special conditions.
74. Article 92.1 of the EC Treaty provides that aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition, by favouring certain undertakings or the production of certain goods, is incompatible with the common market in so far as it affects trade between Member States.
75. In order to assess whether a State measure involves aid elements in general, the Commission has established, *inter alia*, the principle that no State aid is involved where public authorities contribute to a company on a basis that would be acceptable to a private investor operating under normal market economy conditions.³³ If the private market investor principle does not apply, the measure may be considered as aid and its compatibility with Article 92.2 or 92.3 of the Treaty has to be examined by the Commission. At first sight, the assessment of aid in the port sector appears to present no particular difficulty as far as social, restructuring, operating and rescue aids are concerned. However, given the widespread practices of State involvement in the sector and the sometimes unclear allocation of responsibilities therein, the assessment of State measures in the light of the State aid provisions of the Treaty is not always without problems.
76. A good example of such a problem is the public financing of superstructure, intended to be operated by private companies. In such cases, i.e. when a public (port) authority decides to contract out public investments to private operators, the process should be based on open and transparent public tendering procedures, with the successful bidder obliged to maintain independent accounts separate from those of the port. This seems to be the current practice in a number of ports.
77. If the cost recovery approach becomes a generally accepted standard, and in the sake of ensuring transparency and fair competition among ports, the *market investor principle* could eventually be extended to include investments in infrastructure. *Inter alia*,

³² op. cit. 3, paragraph 351.

³³ Commission, Application of Articles 92 and 93 of the EEC Treaty to public authorities' holdings, Bulletin EC 9-1984.

something like this would eliminate the often complex and confusing need to distinguish between public investments in infrastructure and superstructure.

Transparency of Port Accounts

78. An effective and fair implementation of the cost recovery approach, the evaluation of State aid measures and meaningful comparisons among ports undoubtedly require the financial transparency of port accounts. This is the more so when ports include a number of commercial activities, carried out by private operators, that should, according to Community law, be seen as separate undertakings with separate accounts. Currently, however, due to differences in the institutional framework, financing and charging regimes in ports and related infrastructure in Europe, the financial relationships between the public sector and the ports are often not clear.
79. The Commission Directive 80/723 on the transparency of financial relations between Member States and public undertakings³⁴ applies in principle also to the port sector. In general, the Directive applies to public undertakings whose turnover is at least 40 MECU during the two financial years preceding that in which public funds are made available. Member States are obliged to provide information at the request of the Commission, notwithstanding the fact that, occasionally, economic activities of an industrial or commercial nature may be integrated into the State administration.

PORT SERVICES – MARKET ACCESS AND ORGANIZATION

General

80. Ports are principally service industries having as their main function the transfer of passengers and cargo from sea to land transport and vice versa. To achieve this, the port provides a miscellany of services and facilities, often distinguished between those pertaining to the ship (such as pilotage, towage and mooring) and those related to cargo (mainly cargo-handling and storage). In addition, a number of ancillary services are also provided by the port, facilitating its orderly operation. The latter include communications, port security, fire-fighting, bunkering, water supply and waste reception facilities. Depending on the organization, legal status and objectives of a port, port services can be provided either as a comprehensive package or separately, and on a compulsory or voluntary basis.
81. The efficiency, cost effectiveness and quality of a service are, in general, concepts more difficult to establish and value than in the case of merchandised goods. Port services are no exemption to this. However, their smooth and coordinated functioning remains crucial in determining overall port performance and competitiveness, and the efficiency of investments in port infrastructure and superstructure.
82. In several cases, the port services sector still maintains significant rigidities and restrictive practices, often in variance with the economic and structural evolutions sweeping across Europe. It is true that as a result of new technologies, port services require a high level of professional competency in order to avoid accidents in the port area. To this end, and also to prevent possible detrimental effects of liberalization on the level of safety, the establishment of minimum qualification requirements for pilots, mooring personnel and VTS operators is being examined. However, exclusive rights and

³⁴ Commission Directive 80/723/EEC (OJ L 195 of 29 July 1980), as amended by Directive 85/413/EEC (OJ L 229 of 28 August 1985) in order to cover, *inter alia*, the transport sector.

legal or *de facto* monopolies are often unconvincingly (let alone unnecessarily) explained on grounds of safety, public service obligations, minimum company size, historical factors and local particularities.

Services Related to the Cargo

83. These services consist of stevedoring, i.e. the loading, stowage and discharging of cargo, storage (short term), warehousing (long term – open, closed or refrigerated) and, possibly, cargo-processing, customs clearance, etc.
84. Among all port services, cargo-handling has been the one most profoundly affected by technological development and intensified inter-port competition, the latter mainly as a result of the completion of the internal market. Containerization and the capital-intensive nature of shipping have increased pressures on ports for further improvements in labour productivity and operational efficiency. In its efforts to adjust to the new demand requirements, the port industry itself has also been progressively transformed in a capital-intensive one, requiring massive investments in sophisticated cargo handling equipment and commensurate reductions in direct port employment (again, the not untypical example of Rotterdam is shown in Table 4). These developments are shaping new tendencies in the market, characterised by capital concentration, specialization and vertical integration.

Table 4: General Cargo Productivity at the Port of Rotterdam

	<i>Cargo Handling Employees (x 1000)</i>	<i>General Cargo (million tons)</i>
1985	14	49
1990	11	58
1995	9	71

Source: Erasmus University Rotterdam

85. In the majority of Member States no formal restrictions exist for firms wishing to establish themselves as stevedoring companies in an EU port. However, the particular market structure of the stevedoring industry, the size of required investments, lease contracts, minimum company size and scarcity of land may pose effective barriers to new entrants and offer significant advantages to existing ones. In addition, although stevedoring companies are in principle free to apply for port sites, such application may be subject to different evaluation criteria, applied by the competent Authorities, such as economic and environmental impact, job creation, etc.
86. At the same time, inflexibility in the supply of port labour has often been contested as not corresponding to the new technological requirements of modern port operations. Several Member States have thus recently introduced legislative reforms aimed at adjusting the structure of the port labour market to technological and structural changes, while at the same time taking into account the associated social problems.
87. Port labour rigidities are mainly attributable to the registration of port workers and the existence of labour pools. In several Member States port work is restricted to registered port workers; a practice encouraged by *ILO Dock Work Convention* of 1973. The underlying principle behind this practice is to limit casual work and the degradation of social protection standards this sometimes entails and to ensure that only properly trained

and qualified workers are given the responsibility to operate advanced and expensive equipment.

88. However, limitations in the supply of labour can be a hindrance to new investment in the port area and can severely affect port efficiency and competitiveness. Furthermore, in some Member States, registers are kept at unjustifiably high levels, while the relatively protected position of port workers enables them to enjoy salaries and other conditions of employment that are considerably higher than those paid for comparable jobs elsewhere in the economy. Some observers³⁵ argue that this privileged position has finally resulted in a negative attitude of the general public and other unions towards port workers.
89. Labour pools exist in a number of EU ports. They have their origin in the past, at times when port work was highly irregular, mainly due to the (then) erratic and unpredictable pattern of ship arrivals. Their aim was to enable port workers share, as equitably as possible, the “peaks and troughs” of port work. Among others, this had helped to de-casualise labour and provide some form of income and employment stability to port workers.
90. Nowadays, pools constitute the bridge between the former labour-oriented type of port organization, based on casual employment, and the present capital-intensive one where direct and long-term employment relationship with the operator becomes the rule. Thus, for the industry, pools constitute a practical solution to work irregularity, worth participatory financing by operators in the port. Pools may be founded on a legal provision, imposing the participation or control of public Authorities, or on a voluntary basis following agreements between employers and the workforce. They may take the form of a public or commercial enterprise, State agency or cooperative.

Services Related to the Ship

91. In general, public sector involvement in the provision of these services is considerable in most EU ports. The nature of ship-related port services is considered by several Member States to be intrinsically related to the safety of vessels, people, cargo and the port community as a whole. Thus, the service is often modeled around the “public service” approach, enjoying considerable immunity from competition law³⁶, with dues determined or controlled by the competent national administration. Of all ship-related services, pilotage, towage and mooring are considered to be the most important.

Pilotage

92. Pilotage is the act, carried out by a qualified person known as a pilot, of assisting the master of a ship in navigation when entering or leaving a port or an area of confined waters. It is a characteristic example of a compulsory nautical service, particularly for vessels exceeding a certain tonnage or length and for vessels carrying dangerous goods. Exemption certificates for frequently calling masters and vessels (usually ferries) may be issued, albeit on the basis of complex and diversified rules. Exemptions from mandatory as well as greater use of shore-based pilotage are practices that should be encouraged as they converge to the EU’s objective of promoting Short Sea Shipping. Such practices should, however, be adopted as long as they do not jeopardize the safety of navigation or the discharge of entrusted public service obligations, something largely depending on the local circumstances.

³⁵ see A.S. Harding (1990) *Restrictive labour practices in seaports*. The World Bank, Washington (WPS 514).

³⁶ The Court has recently held in the “Calì case” (CJEC 18/3/97, *aff. C-343/95, Diego Calì & Figli Srl/ Servizi ecologici porto di Genova SpA (SPEG)*, unpublished), that article 86 of the Treaty does not apply to the legal monopoly of anti-pollution control on the ground that this activity is inherent to the essential prerogatives of the State responsible for the protection of the marine environment.

93. The degree of public sector involvement in the provision of the service varies widely across Europe. In some Member States, the service is entrusted to national or port authorities and pilots are, in this case, civil servants. In other Member States, pilots are self-employed in partnership associations or collectives, which can be financially or a operationally autonomous. Even in this case, however, public sector involvement still remains predominant: pilot associations are appointed by the competent Authority who holds the overall control and responsibility for pilots' licenses, training, tariffs and quality. The regulatory framework that governs the provision of the service affords pilot associations *de jure* exclusive rights, often associated with public service obligations, and it limits pilot liability in case of accident. Exclusive rights are usually limited to a single port.

Towage

94. The service consists of towing or pushing ships with small powerful vessels (tugs) and in particular of assisting ships' manoeuvres in port or in access channels, as well as of providing assistance in mooring, docking, lightening and bunkering operations.

95. Although information at the disposal of the Commission is fragmented and rudimentary, it seems that a significant diversity of organizational structures exists in Europe. Here, too, the service is provided either by the public or private sector, on a voluntary or mandatory basis. Public sector provision may involve the local port authority or licensed operators under exclusive rights. In this case, rates are fixed and controlled by the competent national, local or port authority. Where the service is provided by private operators, no formal restrictions to market access exist and public sector involvement is generally limited to ensuring compliance to safety and environmental standards. Rates are in principle freely negotiated.

Mooring

96. Berthing, unberthing and mooring refers to the service of securing the ship at berth by ropes. A similar lack of systematic information exists and the same variety of legal regimes seems to prevail: the service is provided directly by port Authorities, by licensed companies or cooperatives operating under exclusive rights, or by a number of private companies. In certain cases, licensed operators are charged legally or contractually with public service obligations, ensuring their participation in emergency situations. The licensing system implies also the involvement of Port Authorities, and eventually of professional organizations, in the fixing of rates.

Port Services under the Rules of the Treaty

97. It appears that despite structural and economic evolution and trends towards new organizational forms, the port services sector in Europe continues to adopt (by choice or necessity) institutional rigidities often not conducive to greater port efficiency and competitiveness. By and large, restrictive practices in the sector usually derive from employment conditions, due to historical, political and economic factors, that several Member States have recently undertaken to remedy.

98. According to the principle of neutrality, guaranteed by art. 222 of the EC Treaty, the Commission is neutral with regard to the private or public status of port operators. Moreover, the Commission respects, on the basis of the subsidiarity, the right of Member States to define the regimes of the services provided in their ports according to their particular geographical, administrative, social, technical and historical circumstances.

99. However, and although ports have remained for more than thirty years outside Community action, as a gray-area between sea and land transport, the European Court and the European Commission have repeatedly made it clear that the rules of the Treaty, mainly those pertaining to competition, also apply to ports. This legal tendency is consistent with the European Union's policy to encourage modernization and efficiency, taking into account structural developments in worldwide competition and the need of companies to seek out better quality at reasonable prices.
100. The legal context of the application of the rules of the Treaty to the port services sector has recently become clearer on the basis of the principles confirmed by the Court jurisprudence and the Commission's decisions. At a first instance, the Court of Justice has condemned a particular case of a regime of stevedoring services, based on the dual monopoly of port operators and dock work companies, purported to have led to abuse of dominant position. Subsequently, the discriminatory tariffs charged by pilot corporations in a certain port were held to be incompatible with EC competition rules.³⁷ In addition, the Commission has also adopted Decisions applying competition rules to the port sector, condemning port undertakings, acting both as port Authorities and shipping companies, for having refused their competitors access to essential port facilities.³⁸
101. In enforcing the Treaty rules to the port services sector, the Commission will examine each complaint on a case by case basis, giving due regard to the following considerations:
102. In principle, the general rules of the Treaty with respect to competition and discrimination on grounds of nationality also apply to port services, as long as this does not obstruct, in law or in fact, the execution of the assigned tasks. The European Union is particularly sensitive to the issue of safety of maritime transport and well aware of the fact that safety considerations often bring some port services under the ambit of Article 90 of the Treaty which can restrict market access by legitimizing exclusive rights of public undertakings entrusted with the operation of services of general economic interest or with public service obligations.
103. In this context, however, the Commission has to examine, on the basis of the principle of proportionality, if the same objectives could not be achieved by less restrictive practices or even without restrictions at all. The challenge, therefore, is to combine safety imperatives with a structure compatible with competitive patterns. This is of particular relevance in cases where a single undertaking is operating both services falling under the scope of Article 90 and ones of purely commercial nature.³⁹ In such a situation, and also in the sake of fair and transparent pricing, port operators should be encouraged to maintain separate accounts.
104. In some ports and under certain conditions of demand, exclusive rights can be justified by the fact that only one operator can economically provide the service. However, when the national system is based on a concession or a license, it would be desirable to effectuate the selection of the supplier(s) on the basis of a transparent, objective and non-discriminatory public tender procedure, granting exploitation rights for a (limited) period that would, *inter alia*, allow normal recovery of investments. This last

³⁷ CJEC 17/5/94, *aff. C-18/93, Corsica Ferries Italia Srl/Corpo dei piloti del porto di Genova*, [1994] ECR-I-1824. Actually the Court is considering a recent preliminary issue concerning the legality of the compulsory provision of mooring services in two ports and of the tariffs applied, alleged not to reflect the real cost (*aff. C-266/96, Corsica Ferries France S.A./Ormeggiatori*).

³⁸ i.e. *Decision 21/12/93, Port de Rødby*, 94/119/EC, OJEC L 55/52, 26-2-94; *Decision 21/12/93, IV/34.689, Sea Containers/Sealink*, OJEC L 15/8, 18-1-94

³⁹ in case 179/90 *Merici Convenzionali di Porto di Genova v. Gabrielli* [1991] ECR-I-5923, CJEC 10/12/91 the Court explicitly held that the stevedoring services could not qualify as services of general economic interest.

point emphasizes the significance of adequate monitoring by the national authorities responsible for the approval or fixing of prices, aimed at ensuring that prices are fair, transparent and reflect the costs incurred in the provision of the service.