



Position paper of the European Sea Ports Organisation (ESPO) and the European Federation of Inland Ports (EFIP) on permitting and facilitating the preparation of TEN-T core network projects

Introduction

Ports need additional space to develop in order to optimize green hinterland connections, upgrade existing infrastructure, and cope with the continuing growth of traffic (cargo handled short sea shipping and global container traffic). Growth aspirations can, however, be limited by conflicting policies on competition, transport and environmental protection. Coastal areas often constitute rich ecosystems and they are often also the ideal location for residential development. However, they are essential in port development plans and fundamental for the up-grade and further development of transport infrastructure, needed to complete the Trans-European Transport Network (TEN-T). Despite the good practice examples, port development projects have overall suffered significantly from increased costs, complex approval procedures and resulting delays that are not always justified by other societal benefits.

European ports believe that there is a need to reduce unjustified administrative burden on permitting procedures in order to strike a balance between transport, societal, environmental and economic objectives.

For all these reasons, ESPO and EFIP welcome DG MOVE study on permitting and facilitating the preparation of TEN-T core network projects.

Issues to be tackled in order to improve permitting procedures and facilitate the preparation of TEN-T projects

Complexity of the procedures due to the cross-border nature of ports project

The cross-border element of TEN-T port projects adds complexity to the permitting procedures that port authorities need to face. In fact, **many port projects can be considered “cross-border by nature”** given the fact that their functions is to connect locations situated in more than one EU country. This is well illustrated, for example, by the definition of “Motorways of the Sea”, representing the maritime dimension of the Trans-European transport network. According to art. 21, par. 2: “Projects of common interest for motorways of the sea in the trans-European transport network shall be proposed by at least two Member States”. This entails dealing with different national procedures which can create delays, legal uncertainty, lack of coordination, and long assessment procedures or consultations.



Lack of coordination between Commission procedures

TEN-T projects applications often suffer from **a lack of coordination between policy objectives of the different DGs of the European Commission**. This is especially true for State aid rules: TEN-T projects are already approved by DG MOVE/INEA, while the project still needs to get cleared by DG COMP that has to verify the compatibility of national co-financing with State aid rules. For this reason, more coordinated timings, applications, and policy objectives of the European Commission are pleaded by European ports. Moreover, ESPO and EFIP ask clearance on compatibility of state aid with EU rules should be submitted in time by DG COMP, in order to avoid the legal and economic uncertainty of the projects. A “one stop shop” would be desirable.

Public procurement rules: complexity and imbalanced positions

As regards European public procurement rules, port authorities are often put in a weak position compared to the contractors. In fact, EU procurement rules are obliging public authorities to be very detailed in the tender specification whereas the complexity of ports infrastructure projects often need some flexibility in order to adapt the projects details during the execution of the projects. These very strict conditions put **the contractor in a dominant position vis-à-vis port authorities** causing unjustified delays and projects' costs increases.

Avoid procedural duplication

EU legislation obliges ports to carry out 2 different Environmental Impact Assessment (EIAs) of infrastructure projects: 1) EIA on the strategic level; 2) EIA on the concrete project level. Already at the strategic level, ports are often required to carry out an EIA with many concrete details on the projects. This often results in a **burdensome duplication of EIAs that should be avoided through a better harmonisation of procedures**.

Need for an effective implementation of EU rules

The European Union should focus on better regulation and implementation of existing rules. However, harmonised implementation of European rules should not consist in an “article-by-article” check on the transposition of EU directives at the national level. **The transposition checks should be carried out on the fulfilment of the objectives of the EU law by national rules**, in order to assess whether the “spirit of the legislator” has been respected.

Moreover, the transposition of European directives is, in certain cases, a mere copy of the wording contained in the Directives. This entails that the transposed text often results in contradictions with the existing national and regional legal order. This should be better assessed by the European Commission.



Specific challenges related to the Natura and Water Framework legislation

Despite the Nature directives and the EC guidelines for their implementation, there is significant remaining legal uncertainty. It is still common that court rulings dominate the implementation and understanding of the directives without taking into account the guidelines that have been jointly developed by the Commission and the stakeholders. **ESPO and EFIP would like to see the guidelines gaining more weight in the decision making process. A similar verdict applies to the Water Framework Directive (WFD).** The complexity of the system established by the WFD has led to several highly controversial court proceedings, delaying infrastructure projects for years. This may seriously jeopardize the implementation of TEN-T projects in seaports and inland ports. Any unwanted effect of the regulation should be counteracted by an adaptation of the Water Framework Directive so that its objectives are safeguarded but that the other European objectives (TEN-T completion, mobility, modal shift, connectivity, etc.) can be realized as well. In addition, guidance is also necessary for the assessment of the effects of infrastructure projects on the environmental objectives of the Water Framework Directive (e.g. how to integrate WFD environmental objectives into the EIA).

On specific challenges related to the Natura legislation, please find enclosed the ESPO-EFIP Position paper and Code of Practice on the Fitness Check of the Birds and Habitats directives.