
The EU port policy in a historical perspective

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Abstract

This paper examines the evolution of the European Union (EU) Port Policy within a historical perspective. Analysing the changing aspects of the sectoral socio-economic context and the alterations of the institutional setting, the paper explains the slow start towards a European Port Policy (EPP), that lasted more than three decades, and then assesses why, and how, policy actors involved in the EU policy making have succeeded in carving out elements of a policy framework. The study chronicles the stages by which the EU has moved into the port policy field. Grounding on the analysis of the changing sectoral environment, the paper analyses the complex sequence of events, which have led either to legislative and political decisions or to output failures. As demonstrated by the historical analysis (1957-2004), policy integration is a dynamic, seemingly irreversible, process, which marked by the searching for a balance between liberalisation and harmonisation.

Key words: ***Port economics, port policy, European integration.***
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1. Introduction

This paper examines the evolution of the European Union (EU) Port Policy, the changes of its nature, and objectives within a historical perspective. Analysing the changing aspects of the sectoral socio-economic context and the alterations of the institutional setting, the paper explains the slow start towards a European Port Policy (EPP), that lasted more than three decades, and then assesses why, and how policy actors involved in the EU policy making have succeeded in carving out elements of a policy framework.

This in an area where national governments have performed as market (de)regulators, and/or as maritime infrastructure investors, while private strategies have been the dominant shapers of the market practices. On the face of this environment, and not least because of the heterogeneity of the port industry, port policy has been an unpromising candidate for the Europeanisation of policy-making.

This paper chronicles the stages by which the EU has moved into the port policy field. Grounding on the analysis of the changing sectoral environment, the paper analyses the complex sequence of events, which have implicated various interrelated phases (including identification of problems, formation of draft proposals, formal decisions and their implementation) and have led either to legislative and political decisions or to output failures.

2. Towards a European Port Policy: The Four Periods

During the historic course of European integration, and within the evolutionary framework of the Common Transport Policy (CTP), the progress towards an explicit European Union policy concerning the port sector can be distinguished into four periods, each exhibiting distinct features. The first period lasted from 1957 to 1973 and was characterised by the exclusion of the transport sector from the framework of CTP. The second period, which was characterised by a policy of ‘non-intervention’ in the port sector, lasted from 1974 to 1990. The third period, begun in 1991, lasted a decade, and was characterised by the resumption of initiatives and the formation of proposals within a steady course towards a European Port Policy. Developments in the 21st century are dominated by a search for a long-term EU strategy, representing a fourth distinctive period. Table 2.1 illustrates the keystones of this process.

Table 1.1 Towards a European Port Policy: Main Policy Developments

PERIOD	YEAR	DEVELOPMENT
1st Period	1957	Signing of the Rome Treaty (introduction of the CTP)
	1970	First EU document with reference to the port sector (policy of non-intervention)
2nd Period	1974	Expansion of the CTP base to include maritime (and air) transport
	1983	EP takes the inaction of the Council to the ECJ

	1985	Commission Memorandum: The first proposals towards a Common Maritime Transport Policy (thoughts of revising the non-intervention policy)
	1987	The Single European Act comes into force
	1991	Introduction of the Horizontal approach Signing of the Maastricht Treaty of the European Union (policy for the development of intermodal transport – TEN-T)
	1992	White Paper on the future of the CTP Green Paper on the impact of transport to the environment
	1993	Policy framework concerning maritime safety
	1995	Publication of a policy document on Shortsea shipping (first signs of a European Port Policy)
3 rd Period	1996	Maritime Strategy documents
	1997	The Treaty of Amsterdam Green Paper on Sea Ports and Maritime Infrastructure (Revision of the ‘non-intervention’ policy) Signing of the Amsterdam Treaty
	1998	Strategy documents integrate the CTP in the EU sustainable development and cohesion policies
	1999	New proposals by the EP towards a European Sea Ports Policy
	2000	The European ports become part of TEN-T (Common position of the Council)
4 th Period	2001	Publication of the ‘Port Package’ White Paper on a European Transport Policy for 2010
	2003	Rejection of the Port Package by the European Parliament
	2004	Publication of the Port Package II

The precise moment that determines the introduction of a new EU approach, and the simultaneous conclusion of a previous one has not been apparent. The formation and progress of any EU policy is a result of a structured and complex sequence of events. As every process of policy development (Kingdon, 1984), it consists of several intertwined phases, including the stages of problem identification, the formulation of draft proposals, the adop-

tion of official decisions, and the implementation of those decisions. Hence, the distinctive moment of a new EU strategy may be determined either by the ‘discourse’ of a policy approach, i.e. the intellectual developments that the Commission initiatives and policy proposals put forward, or by the ‘policy output’, i.e. the legislative and political decisions that the Council of Ministers adopts.

Nonetheless, the selection of the ‘policy discourse’ as the indisputable point in time of the introduction of a new EU approach is not free of ambiguities. A specific policy output influences the future approach of the Commission. On many occasions the conceptual innovations, informal discussions, and proposals necessary for actions are evident before the formal expression of the EU Institutions’ new policy thinking. For instance, the Treaties and the successive enlargements of the EU, both ‘policy outputs’, have been identified as influential agenda setters affecting all EU policies (including the CTP).

It would be misleading, however, to determine a priori the moment they began to affect, at least intellectually, the nature of the ensuing EU policies. Specific proposals regarding the improvement of maritime infrastructure can be traced back to 1997 but as explained in other parts of this volume, earlier documents can be considered as predecessors of those proposals. On that account, although a European Court of Justice (ECJ) ruling on the application of the rules of the Rome Treaty regarding maritime transport (1974) is commonly considered as the point that marked the beginning of the Common Maritime Transport Policy (CMTP), this point could also be traced to a year earlier, when the first enlargement of the EU took place.

Since there usually is a time lag between the reaching of any political agreement and the moment that this agreement is implemented (for example the Treaty on European Union, which incorporates policies for the creation-development of the Trans-European Networks in Transport (TEN-T) and of combined transport, was announced in 1979, signed in December 1991, and ratified in November 1993), only the beginning of the legal influence of a policy decision can be precisely traced. Preferences ultimately depend on the conceptualisation of the policy-making process. For analytical reasons, and taking into account the existing practice, in this book the starting point of a policy is regarded the point of ‘policy discourse’ by the EU institutions (i.e. for the TEN-T starting point is considered the year 1979), without disregarding the importance of preceding or ensuing decisions.

3. 1957–1973: The absence of maritime transport from the CTP

Article 3 of the Treaty establishing the European Community (Treaty of Rome, 1957) states that the Common Transport Policy is one field requiring

action by the European Community. The aim of the founding countries of the EU (Belgium, France, West Germany, Italy, Luxemburg, the Netherlands) to emphasise the transport sector should not be surprising: the free movement of goods and persons was, along with the free movement of capital, the *raison d'être* of the Common Market. The first attempts for the formation of a supranational transport policy already taken place in the institutional framework of the European Coal and Steel Community (ECSC)¹.

A special chapter of the Treaty (Articles 74–85) recognised transport as an area in which action ought to be taken and provided the broad lines of what this policy ought to be. However, the transport injunctions of the Treaty were remarkably general and limited in scope (Bayliss, 1979). Article 3 did not have any direct reference to transport modes but Article 84(1) stated, “*the provisions of this Title shall apply to transport by rail, road, and inland waterways*”. Maritime transport was mentioned only in Article 84(2) which provided that “[T]he Council may, acting unanimously, decide whether, to what extent, and by what procedure, appropriate provisions may be laid down for sea and air transport”. The interpretation of the latter paragraph led to the conclusion that maritime (and air) transport fell outside the scope of the CTP, as well as outside of other provisions of the Treaty such as competition².

The first period of the CTP was characterised by ‘disappointing performance’ (Despicht, 1969; Button, 1984), and ‘output failure’ because “*the system was unable to translate a general commitment to participate in a collective decision-making effort into an acceptable set of policies of rules*” (Lindberg & Scheingold, 1970, p. 165). The existence of different regulatory regimes in the national markets discouraged any policy progress (Gwilliam, 1990; Button, 1993). Lindberg & Scheingold (1970) argued that by trying to introduce far-reaching proposals the Commission found little support by the different national governments, since some of them (i.e. Germany) were advocating the ‘social service philosophy’ and others were endorsing the ‘commercial philosophy’ (i.e. the Netherlands). That situation led to the critical absence of any hegemonic attempt towards concrete policy developments. Others question, however, whether any policy actors, including EU institutions, really perceived a CTP to be in their vital interests. Abbati (1986) and Vickerman (1992) suggest that the CTP was a component of the

¹ Specifically, the founding Treaty of the ECSC (Treaty of Paris, 1951) had explicitly laid out a number of basic requirements regarding transport charges for carrying coal and steel, publication of rates, and the use of discriminatory transport charges, during a transition period prior to eventual harmonisation.

² The Council Regulation 141/62, of 26.11.1962, excluded maritime (and air) transport from the common competition policy.

Treaty due to a commitment to a gradualist ‘sectoral’ approach of integration and not because the founding members were conscious that such a policy was an essential precondition of the common market³. To Swann (1999) the introduction of a CTP was the result of a delicate political compromise between the Netherlands, which had significant interests in the Rhine transport, and the five other states.

The latter may explain why the founders of the EU, while having gained some experience in the area of international road haulage policy in the context of the ECSC, decided to include inland waterways in the provisions of the Treaty but opted not to include neither maritime nor air transport. Given the major difficulties that had already arisen, during attempts to reach a compromise formula for inland transport, it seemed preferable, at that point, to exclude these two modes from the *lex specialis* of the Treaty. The functioning of the EU and the shortcomings of the decision-making process, at that time, significantly affected any progress towards a common transport policy. More specifically, Erdmenger (1983) propounds that the ‘strongly legalistic even dogmatic in nature’ work in the field of transport during these early days could be interpreted as a result of a ‘certain institutional dogmatism’. Decisions had to be taken according to the legal provisions in the framework of the Treaty and in no other way.

It is worthwhile to mention that the first, even if extremely premature, interest for the resolution of problems regarding European ports at a supranational level was demonstrated during the early 1970s. The first initiatives were the Commission’s *Note on Port Options on a Community Basis*, in 1970, and a report to the European Parliament (EP), entitled *Report on Port Policy within the Framework of the European Community*, in 1972⁴.

4. 1974–1990: The ‘non-intervention’ policy

The first EU enlargement (1973) had an enormous impact on the content of the CTP. It increased the relative importance of sea transport for the new EU of nine member states, leading to the incorporation of maritime issues in the EU agenda, as an integral part of the CTP. The accession of three maritime nations (Denmark, Ireland, and the UK) remarkably changed the economic structure of European integration. Among others, it substantially increased the relative importance of the maritime mode. The bulk of the trade

³ The ‘sectoral approach’ of integration is a process ‘(i) limited to particular industries or sectors of the economy, or the economies concerned and (ii) gradual proceeding successively from sector to sector’ (Machpul, 1977, p. 33).

⁴ European Commission, Document 16/VII/71 (24/03/1970); and Doc.EP 10/72 (12/04/1972).

between the three new members and the rest of the EU was carried by sea. Maritime flows represented 25% of the intra-EU trade of nine members compared to 8% in the EU of six. The size of the EU-flagged fleet almost doubled, and the number of ports within the EU increased as well. The Mediterranean enlargements in the 1980s (accession of Greece in 1981; and of Spain and Portugal in 1986) furthered the importance of maritime transport to the EU economy.

A major policy reform was the extension of the EU interest to include the maritime mode within the common transport strategy. In 1974, the Commission took a test case to the ECJ attempting to resolve whether the provisions of the Treaty were applicable to the maritime mode⁵. The ECJ confirmed the EU policy-making authority. This was a ruling with significant legal and political implications: it incorporated this mode in the process of European integration, hence, it is considered as the most important ECJ case in the field of maritime transport (cf. Bredima-Savopoulou, 1990; Power, 1992).

Subsequently, the focus turned to whether the EU could help to bring about solutions to specific sectoral problems. Following a European Commission initiative in 1974, the Community Port Working Group was formed consisting of representatives of EU ports. The Working Group studied the institutional framework and the management of European ports in an attempt to identify potential actions that would improve the competitiveness of the port industry⁶. In 1975 the French government presented a memorandum on the development of EU action on shipping and in 1976 an interim EP report emphasised the need for further EU coordination and action in the field of shipping and maritime transport. After the previously mentioned ECJ ruling all EU institutions embarked on discussions on the prospects of a common policy regarding all transport modes. According to the then Commissioner whose portfolio included transport: “...*the Community is working on the emerging problems in respect of which it seems profitable to examine whether the Community might be able to act more effectively than Member States individually; or indeed supplement Member States activity.*” (Burke, 1978, p.13).

Until the end of the 1980s, a *policy of non-intervention* in port production and industry was followed. The European Commission accepted and adopted the view of the Community Port Working Group on ports that there were no sufficient reasons justifying the introduction and development of a specific policy regarding ports. At the same time, the Commission acknowl-

⁵ Case 167/73 Commission v. France (1974) ECR 359, alternatively known as the ‘French seamen case’.

⁶ Report into the Current Situation in the Major Community Seaports drawn up by the port Working Group (CB-22-77-863).

edged the existence of issues that ought to interest the EU, since ports comprised a vital link between maritime and inland transport modes. For that reason the Commission adopted the view that issues regarding ports ought to be taken into account when issues regarding maritime and inland transport were being examined. Consequently, the Commission proposed the examination of whether and to what extent national and European policies on charging and state aid were affecting port competition.

In a paper entitled *Progress towards a Common Transport Policy: Maritime Transport*, the Commission reviewed its work on ports up to 1985, stating that “*the Commission’s services worked closely with representatives of the major port authorities of the EU in the production of two reports. The first of these set out the major differences in practice as regards the financing of infrastructure, superstructure and operations both between the ports of the various Member States and often between the ports of a single country. The second attempted to determine whether these differences led to serious distortions to competition.*” (CEU, 1985, paragraph 102)⁷

The fact that the majority of experts and stakeholders did not consider that the then differences required a specific EU port policy was the main reason behind the inertia. Still, the Commission argued that there existed various aspects of port policy for which EU action would be useful. Since European ports are key links in the transport chain between maritime and inland transport, it was considered necessary that issues of port policy should be integrated in the framework of the inland and maritime aspects of the CTP (*ibid.*). Further, the Commission deemed it necessary to take into account the suggestions of the EP whose arguments were stressing the fact that issues regarding ports ought to be seriously considered. To define possible EU level initiatives, the Commission decided to explore two issues:

- The influence of national and EU transport policies on conditions of competition between the ports of member states.
- The influence of charging policies and provision of state funds to ports on competition between the ports of the member states.

With respect to the effect of national and EU transport policies on the conditions of competition between European ports, the Commission recognised that the market structure of inland transport modes had a significant impact on the competition between the EU seaports. Although not the only determining factor of the competitive strength of a port, the attractiveness of a port is enhanced the more integrated with inland transport are the services

⁷ The two reports mentioned were: (a) the Report into the Current Situation in the Major Community Seaports drawn up by the port Working Group (CB-22-77-863), and (b) the Report of the Port Working Group (VII/440/80) (Internal Working Paper)).

it provides. At the same time, the EU was regarded as a collection of geographical areas. Each of these areas could be served by several ports, not least because of the constant improvements of the technical and organisational efficiency of inland transport modes. Port competition could function optimally only if each of these markets was regulated along much the same principles. *'Harmonisation'* became the main concept of that period.

This concept led to thoughts of resolving competition problems between German ports and ports located in the area defined by the ports of Amsterdam, Rotterdam, and Antwerp. Inland transport in Germany was, to a large extent, subject to a system of regulated competition involving a relatively rigid set of compulsory tariffs for road haulage and inland waterway transport, a capacity limitation on commercial road haulers and the intervention by public authorities that this regime entails. By contrast, inland transport to and from the ports of Amsterdam, Rotterdam, and Antwerp was predominantly international, and enjoyed a freer regime in respect of access and tariffs. There was evidence of similar discrepancies in other transport markets making up the hinterland of several seaports with overlapping areas, for instance between North Sea and Adriatic ports. In the latter case, goods carried to and from Italy were no longer subject to quotas and road haulers were not obliged to obtain authorisation.

The problem was affecting competition between EU ports, leading EU institutions to advocate the importance for a EU initiative. There was, however, a great difficulty in determining the real distortions of competition, since there is a plurality of factors that influence the volume of traffic at a particular port. Besides, the statistical figures available could not be used to conclude on the actual effects on competition.

The endorsed general principle was that a port linked with a variety of freely competing, in terms of quotas and hinterland charging rates, inland transport modes could, *ceteris paribus*, have a competitive edge over rivals whose hinterland links were regulated by state or quasi-public cartels governing market access and prices. This led progressively to advocates of *'liberalising before harmonising'*: to them the only genuine harmonisation possible would be that brought about by the free operation of the market. It was thought to be conceivable and practicable to abolish all restrictions on access, notably in the area of quota-fixing, and on fixed tariffs in all transport corridors in all EU ports.

This 'corridor approach' did not seem to pose insurmountable technical problems and was expected to stand the test of achieving a level playing field between EU ports. Such an approach was not designed to iron out any natural advantages or disadvantages in the competitive positions of various ports: according to the Treaty of Rome, the aim was to discard all artificial distortions stemming from discrepancies in market regulations and out-of-date

measures. With this end in view the Commission initiated consultations and presented, in the context of its 1985 Memorandum, a proposal to the Council.

In the opinion of the then chairman of the EP Transport Committee it was a period of a 'theological strife' between supporters of liberalisation and supporters of harmonisation (Anastasopoulos, 1994). The former group insisted that liberalisation was the precondition of any policy harmonisation; the latter argued that harmonisation was a *sine qua non* for liberalisation. Thus, national governments were inclined to make only limited commitments with reasonably clear implications.

The Commission favoured inaction as regards other major issues, namely diverge national state aids and port charging practices. Despite the significant variation in the latter case, and its implications for competition between EU ports, it did not consider it useful or necessary, at the time, to embark on the complex task of harmonisation. The decision was based on work undertaken by the Port Working Group (1980), which had concluded that about 5% of the total transport costs were attributable to port charges (however, that relationship varied for certain types of ships, i.e., specialised offshore vessels, cruise ships, or ships calling for repair), so port charges did not seem to constitute the major determining factor in the selection of a port.

As regards state aids to ports, the Commission chose not to attempt to draw up guidelines for the application of the Rome Treaty but to deal with specific cases, if required, directly on the basis of Articles 92 and 93 of the Treaty. The conclusion of the Port Working Group, that national aids to ports were not causing serious distortions in competition, was, yet another time, adopted. Nonetheless, the Commission decided to periodically review the general situation from time to time and study further the differences of national approaches. The compatibility of other state financial contributions (i.e., regional funds, funds aiming to facilitate the development of certain economic activities) with the common market would also be taken into account.

This work of the Commission in the area of ports culminated in 1981 in the submission of a report to the European Parliament on its work towards a EU Port Policy. The EP endorsed the so-called 'Carossino Report' on 'the role of ports in the Common Transport Policy', on 11 March 1983⁸.

Legal factors also contributed to the adoption of a non-intervention policy in port industry and to the failure of the formation or progress towards a European Port Policy. The lack of any reference to ports in the Treaty of Rome (1957) and the ambiguous legal interpretation of the Treaty did not clarify whether the voting system in the Council of Ministers of the EU on issues regarding ports should be based on the principle of unanimity or on

⁸ EP, 80/050/final, 11/03/1983.

the principle of majority voting: the existence of (a) different rules in relation to maritime and inland transport (issues regarding inland transport required majority voting while issues regarding maritime transport required unanimity), in conjunction with (b) the diverse national philosophies underlying port organisation and management, and (c) the subsequent differences regarding the advocated EU policies, did not permit the inclusion of ports into one of the two categories and the clarification of the terms according to which a Member State could express its objections to specific political initiatives of the EU.

Until 1991, no directive or policy regarding a EU Port Policy had been announced or adopted. The Commission did not attempt to advance proposals that would face opposition and opted to continue its co-operation with the representatives of the port industry in order to identify the common positions, to create allegiances and to prepare the background work of future proposals. The previously mentioned Carossino Report and Commission Memorandum were standing as the major policy outputs of the whole process.

During that period, CTP developments focused on the prospects of harmonising the rules governing the inland transport systems in the framework of a common market oriented towards free competition. Initiatives towards a Common Maritime Transport Policy progressed along a different path (Pallis, 2002; Stevens, 2003): national governments considered shipping as a distinctive sector, due to its international character and its significant revenue-generation potential, and the Commission did not proceed towards measures for the creation of a common market in this sector. All the relevant policy actors were considering any EU involvement as an undesirable intervention in an efficiently operating market.

The integral CTP developments during that period were marginal. At the end of the 1970s, the EU was no nearer to a real CTP than it was twenty years earlier (Button, 1984). Whitelegg (1988, pp. 16–17) argued that in the mid-1980s the record of the CTP “...was characterised by little development of its basic thinking about transport and much repetition and bureaucratic non-activity which passes for a common policy”, adding that “...its resilience to popular academic and critical transport policy is remarkable and exists in isolation from transport policies”. Lacking any ‘grand design, member states thought that a compromise could only make each of them worse. Since they could not see any great political advantage stemming from an agreement on a CTP, failure to agree was not perceived as damaging to the European idea (Bayliss, 1979).

The diversity of the institutional priorities was critical. Whereas the Commission, and especially the EP, had realised the importance of the CTP at every stage, the Member States via the Council were reluctant to follow suit (Ross, 1998). The unanimity requirement was strengthening the position

of the *status quo* oriented parties, which in the aftermath of the Luxembourg compromise were effectively defending their interests via the use of veto. Both the Dutch and the British governments used that power on a long list of transport issues in the 1970s, including infrastructure pricing and investment, and apparently apolitical matters became great stumbling blocks (Bromhead, 1979; Gwilliam, 1980). Abbati (1986) concluded that the short-term interests of the Transport Ministers, and the fact that the Commission was seeing itself as an arbiter for a consensus, were clearly revealed in the framing of transport policies. In a similar vein, Gwilliam (1979) held that, when the Commission found it difficult to reconcile the antithesis between liberalisation and harmonisation, it decided on a change of emphasis away from the field of operation to the field of infrastructure. Still, the difficulties surrounding the decision-making process and the problems of implementing and administering EU-level initiatives resulted in negative effects on the production of policy outputs.

However, the institutional framework itself provided the impetus for the progress towards a common policy in all transport modes. The absence of such progress led the EP to institute proceedings against the Council, alleging inaction in the field of transport. It did so in 1982, arguing that the Council had infringed the Rome Treaty “...by failing to introduce a common policy for transport and in particular to lay down the framework for such policy in a binding manner”⁹. In fact, the EP had already expressed its discontent with the slow progress towards a real EU transport policy, to no avail though. Perhaps at that specific point of time, the strategic objective of the first elected EP was not the slow progress of the CTP *per se*, but to test its mandate to press for further integration. Nonetheless, the ECJ confirmed the Council’s inability to convert proposals to actions and ruled that the Commission was obliged to produce proposals for the establishment of a common transport market by 1992¹⁰. That was the first time in the history of the EU that the ECJ found the Council guilty of breaching the provisions of the Treaty of Rome. The EP action and ECJ judgement provoked the Commission’s reactions, which included the publication of policy papers on maritime transport in March 1985 where there was extensive reference to the significant lack of adequate EU activity regarding port production and industry.

5. 1991–2001: Towards a European port policy

In the early 1990s, the EU institutions introduced political initiatives with a view to reversing a long period of inertia and lack of progress towards

⁹ OJ C49, of 19.2.1983, p. 10.

¹⁰ Case 13/83. European Parliament vs. Council of Ministers (1985) ECR 1513.

the creation of an integrated CTP (CEU, 1992a; 1992b). Therein, they acknowledged that the competitiveness of the European transport sector constituted an essential condition for the successful completion of the internal market thus reaffirmed the strategic significance of the transport sector. The coming of age of the Single European Market constituted, due to the changes it had already introduced (i.e. removal of borders, liberalisation measures, including the liberalisation of intra-EU transport), the turning point for transport too (Butt Phillip & Porter, 1995). To enable and facilitate the effective and efficient operation of the Single European Market, the EU decided to accelerate the liberalisation and harmonisation of transport markets and develop a policy that would result in the interconnection of the European transport systems. Moreover, it proceeded decisively to incorporate into the contents of the CTP provisions that intended to prevent and address existing and potential environmental problems caused by economic growth and the associated increase of transport activities.

The nature and underlying philosophy of the EU policy initiative throughout the 1990s indicated that the EU was aiming to adopt a holistic strategy towards the development of the CTP. That strategy was taking into due consideration all transport modes and parts of transport networks. It also addressed the entirety of the direct or indirect targets that the CTP ought to achieve. Those partial targets (i.e., interconnection of local networks) and those parts of the transport system (i.e., European ports) that had been ignored in the past would have to be part of the 'new' policy agenda. The far-reaching goal of that strategy was the creation of a EU framework that would ensure sustainable mobility throughout Europe.

Those initiatives also adhered to the principle of subsidiarity, introduced in the EU practice by the signing (7 February 1992) and enforcement (1 November 1993) of the Treaty of the European Union (Maastricht Treaty): policy actions at EU level ought to be undertaken only if, and insofar as, the objectives of the proposed actions could not be realised adequately by lower levels of administration, i.e. local authorities or member states individually, and therefore, by reason of their dimension or scale of effects, would be better realised by the EU. Besides, by expanding the CTP objectives, the Maastricht Treaty provided for a new momentum as well. The needs for a comprehensive policy approach were explicitly acknowledged, whilst the legal provisions on the Trans-European Transport Networks (TEN-T), and the mobilisation towards the endorsement of further policy initiatives regarding the economic and social cohesion of the EU, provided a base for further developments.

At the strategic level, the Commission presented a revision of the progress, along with a proposal regarding the objectives of the CTP, at the end of 1998 with the publication of two Communications to the Council and the

EP. The first one regarded the relation of the CTP to sustainable mobility and the prospects of the future (CEU, 1998a). The second focused on the strengthening of economic and social cohesion, competitiveness, and sustainable development, through the coordinated working of the CTP and of the Structural Policies (CEU, 1998b). Meanwhile, the Treaty of Amsterdam (1997) had reinforced the subsidiary role of the EU framework to the promotion of social and territorial cohesion. Within this framework, EU policies attempted to emphasise, *inter alia*, the redistribution of the modal pie in favour of the maritime mode, aiming to reduce the problems associated with inland congestion and reduce the impact of transport on the environment.

This prospect encompasses comprehensive initiatives promoting the development of combined goods transport and the creation of trans-European transport corridors. Various other initiatives have been launched, focusing on transport safety of systems, and maritime transport in particular (i.e., implementation of international safety regulations).

As regards maritime policy per se, policy initiatives concerning the port industry, or any other maritime transport industries than shipping, were not included in the policy-making agenda until 1991 (Cafruny, 1991; Power, 1992). The Commission's initiative towards a horizontal EU policy, referring explicitly the overall maritime transport system (CEU, 1991) was the shifting point. Estimating the then existing and foreseeable challenges, it expressed the opinion that the EU should:

- Integrate in its action the necessary measures, which would guarantee that the totality of the various issues regarding all maritime industries would constitute dimensions of a common EU policy, and
- Identify the appropriate means to promote, at the European level, the maritime interests of the EU citizens.

When compared to the traditional practice of emphasising sector-specific issues, the above was clearly a case of introducing an 'unorthodox' approach. By deciding not to follow the traditional approach, but to consider the dimensions of the whole maritime transport system as interconnected, the Commission essentially attempted to incorporate the common shipping policy into the framework of the common maritime transport policy. The policy output of this incorporation encompasses both the dimension of a transport policy and the dimension of an industrial policy. Towards this end, various other directorates of the Commission, apart from the DG-Transport, became active in advancing relevant policy actions, such as DG-External Relations, DG-Economic and financial affairs, DG-Competition, DG-Employment, industrial relations and social affairs, and DG-Environment.

In parallel to the above initiatives, but also in many cases as a result of the above initiatives, the Commission and the European Parliament drafted specific proposals for EU actions with direct reference to the configuration of

the parameters of the institutional and operational framework of port production and industry. In 1993 the EP advocated the following principles of a 'possible' European Port Policy (EP, 1993):

(a) Availability and modernisation of port capacity – to allow a market-led response to changes in shipping and port structures.

(b) Free and fair competition among ports and undertakings operating in ports, in agreement with Community rules.

(c) Integration of ports in a CTP, with a view to creating a European transport system.

(d) Social acceptance of the EU policy and port development, through measures at the training and organisation levels and environmental protection.

Two years later, attempting to promote shortsea shipping (CEU, 1995), all policy actors considered EU initiatives regarding the restructuring of port industry. Their major concerns included the observed decline of investments in port infrastructure.

The progress towards a European Port Policy was confirmed by the re-consideration of the principle of non-intervention by the Commission in the Green Paper on Sea Ports and Maritime Infrastructure (CEU, 1997a), the new report of the European Parliament (1999), and the visible mobilisation of those related to the port sector (i.e. port authorities, users, social partners) and those affected by it (i.e. local authority representatives, haulers) towards the formation of specific proposals regarding the role and contents of the EU initiatives. It was also confirmed by the common positions reached in the Council of Ministers. The latter adopted proposals put forward by the Commission and endorsed by the European Parliament, as regards action programmes and the systematic preparation of new initiatives dealing with the following eight themes:

1. Integration of port policy in the CTP.
2. EU Enlargement and relations with the neighbouring countries.
3. Ports as transshipment points in multimodal transport chains.
4. Development of shortsea shipping.
5. (Transparency of) financing and (harmonisation of) charging systems
6. Port services and market access.
7. Ports, maritime safety, and the protection of the environment.
8. Research and Development.

6. European Port Policy in the 21st Century

While at the beginning of the 21st century, a comprehensive all-embracing European policy aiming to regulate in detail all the issues con-

cerning the port industry did not exist, nor was considered desirable by several policy actors, a series of proposals, signified the substantial progress towards a European Port Policy. The main issues of interest can be divided into three categories (Chlomoudis and Pallis, 2002):

- (a) The inclusion of ports in the TEN-T, and in the CTP in general.
- (b) The systematic approach of regulations regarding access to the port services sector.
- (c) The financing of port services.

Regarding the participation of ports in the TEN-T, the broad EU framework concerning the establishment of an integrated, intermodal transport system was defined in 1996 by a Decision agreed between the Council of Ministers and the European Parliament. Despite the provision of guidelines on specific projects and conditions and despite the consensus on the necessity for inclusion of European ports in the TEN-T, agreement could not be reached on which ports ought to be included in the TEN-T outline plans. The main reason was the inability to agree on the criteria regarding the volume and/or the type of traffic that ports included in the TEN-T ought to serve.

Based on the debate between the EU institutions and the representatives of the port industry, the Commission re-assessed the situation and undertook the commitment to specify more clearly in the guidelines the criteria regarding the inclusion of ports in the TEN-T. As a result, it proposed the inclusion of 300 European ports in the TEN-T plans, on the basis of objective criteria. The adoption of a common position in the Council of Ministers reconfirmed the political will of the EU to foster the inclusion of ports and TEN-T, and the finalisation of the criteria was the outcome of convergence of the different opinions expressed by the European Parliament, the Council of Ministers, and the Commission.

In January 2001, the Council and the EP agreed on the contents of an amendment of Decision 1692/96 that permits the financing of a port only if it fulfils one of the following criteria:

- (a) International ports (Category A), whose annual traffic exceeds 1.5 million tonnes or 200,000 passengers that have established intermodal links with the TEN-T.
- (b) Community ports (Category B), whose annual traffic exceeds 500,000 tonnes or varies between 10,000 and 199,000 passengers that have established intermodal links with the TEN-T.
- (c) Local ports (Category C) that do not fulfil the criteria A and B but are located in islands or remote inland areas and are considered necessary for the provision of steady connections with specific areas.

These points of agreement were closer to the concept of the 'restrictive' approach that had of the EP had put forward, rather than the 'generous' view of the Common Position of the Council of Ministers.

A current peak of recent developments that sketches the prospects of the European Port Policy is the Commission proposal for a 'port services' directive aiming the improvement of the quality of port services (CEU, 2001a). This proposal has been part of a set of proposals, known as the 'port package', that also included the outcome of the Commission's research into public financing and charging practices in EU ports, proposals for the transparency of port financial accounts, and the update of the Green Paper on ports and maritime infrastructure (CEU, 2001b).

The 'port services' directive sought to establish common rules for the implementation of the freedom to provide port services; authorisation for port service provision; limiting the number of port service providers; self handling; duration of individual authorisations; and procedures to be followed. A far-reaching objective was the existence of at least two providers for every port service of three categories. Firstly, techno-navigational services regarding: (a) pilotage, (b) towage, and (c) mooring. Secondly, cargo-handling services including: (a) stevedoring, stowage, transshipment, and other intra-terminal transport, (b) storage, depot, and warehousing, depending on cargo categories, and (c) cargo consolidation. Thirdly, passenger services, including embarkation and disembarkation.

However, the European Commission's proposal was proved to be remarkably controversial. Aspects of the potential regimes governing pilotage, self-handling of cargoes, the transparency of financial relations, and the authorisation process to service providers, have been among the most disputed issues. This was mainly because of the remarkable diversities of European ports, in terms of ownership, management practices, size, geographical location and not least employment patterns of dock-labour. As it had happened in the 1980s (Baird, 1986) and in the 1990s (Pallis, 1997), the industrial diversity of the port industry remains a decisive issue that drives stakeholders and policy to a wide rangers of reactions vis-à-vis an initiative that would restructure the whole European industry.

Following a lengthy consultation with interest parties and a difficult negotiating process between EU institutions, a Conciliation Committee³ detailed a compromise regarding the most controversial issues. This compromise included (a) the obligation of every port and port system to submit information on their financial relations; (b) the obligation of newly authorised service providers to compensate former service providers that have had the duration of their authorisation reduced; (c) the application of the rule in the case of pilotage services, according to safety criteria and public service requirements; and (d) the conditional permission of self-handling. Still, the plenary session of the European Parliament rejected the agreement (November, 2003) and the legislative process failed.

Based on its commitment to free access to all services within the Single European Market, the European Commission re-opened the debate and published (October 2004) a new 'port-services' directive proposal (CEU, 2004a). Comparing to the text rejected by the European Parliament in November 2003, the new proposal remains the same, or very similar, as regards its objective, scope, definitions (apart from self-handling), the selection procedures for granting authorisations, the neutrality of the competent authority in case of selection procedure, the decisions on limitations, and the provisions for pilotage and financial transparency issues. New elements compared to the initial compromise consist of a stricter and mandatory translational regime regarding authorisations, shorter maximum durations for each authorisation, and a new and broader definition of self-handling.

The debate is however very much alive for three reasons. The European Court of Justice examines cases related to allocation of concessions to service providers or to labour organisations on a case-by-case approach. Then, the Commission has already presented a directive aimed to eliminate barriers that prevent businesses from offering services across the EU (CEU, 2004). It is not clear yet, whether its scope, that might exclude transport services on legal grounds, would cover port services. Last, but not least, certain parts of the port industry or port users would like to see free market to port services established. Their interests groups try to put the issue back in the EU agenda when EU institutions are ready to advance policy integration in the field of maritime transport (Pallis, 2002). Recently, the Commissioner responsible for transport stated that a re-drafted proposal would be officially published before the end of 2004 (De Palacio, 2004). The whole process is further enforced by the White Paper on a European Transport Policy for 2010 (CEU, 2001c) which has certain implications for the port sector. Whereas the port package focuses essentially on competition within and, to a lesser extent, between ports, the White Paper is likely to address the crucial aspect of competition between transport modes.

On the other hand, the prospects of formulating EU rules governing the public financing of ports, in line with the 'special regimes' practice applied in accordance with Article 73 of the Treaty in other transport sectors (i.e. shipping, airlines), seems still improbable. According to the opinion that was developed and dominated the debate that took place subsequent to the publication of the Green Paper (1997), there is no need for specific policy action but for the implementation of the recent Transparency Directive on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings¹¹. The details of the legal phrasing and implementation process of this Directive are

¹¹ Directive 2000/52, of 29.07.2000.

considered as the mean to formulate long-term conditions of port operation. The specific Directive advocates the separation of accounts for every kind of economic activity. It also gives the Commission the power to investigate whether 'over-compensation' is offered for the undertaking of activities of general interest, or whether some commercial activities are subsidised. The point of view that similar Directives are necessary only when an economic sector receives substantial subsidies (something that is not the case in the port sector) is gaining support.

This is not to say that there are not stakeholders that support the need for a distinctive EU port policy framework, in order to ensure the prohibition of any public financing of ports. However, the Commission argues that the general rules of the Treaty, which prohibit public financing when it is likely to result in distortions of competition, are effective, if properly applied in the case of the European port industry. Given the critical absence of support by policy-makers and stakeholders, the formulation of specific EU directives regarding ports financing does not seem to be part of the EU agenda in the near future.

7. Conclusions

Since 1957 the EU constitutes an additional supranational policy-making jurisdiction in the field of transport. The first discussions regarding the potential of a (piecemeal) EU port policy took place as early as 1970. However it was only in the 1990s, that the scope and depth of the EU initiatives have widened. The most prominent development is the contemporary debate on various European-level regulatory initiatives (i.e. port package) aiming to reinforce the quality of services provided in European ports, through the advancement of their structural reorganisation. Even though collective European policy solutions do not always arise, discussions have shifted from the minimalist approach, which did not endorse the need for common initiatives, towards the consideration of a more comprehensive EU framework.

Overall, the recent EU policy actions have highlighted the importance of the port system to the prospects of sustainable development of Europe, and have promoted initiatives regarding the operation of an efficient port system in conditions of free competition. The EU has at its disposal two methods of achieving its objectives: the formulation of Regulations and the financing of specific port projects. The other parameters of the operation of European ports, based on the principle of subsidiarity, remain a responsibility of national government, which may decide on the operational and managerial models and of the port services providers themselves. Besides, sound European port policy is not just a question of new legislation and policy docu-

ments it is often also a matter of proportional application of existing legislation, which can often be of a more general nature.

As demonstrated by the historical analysis, policy integration is essentially a dynamic process. Searching for a balance between liberalisation and harmonisation, the contemporary EU agenda incorporates several dimensions. Therein, even rejected policy proposals return for discussion, suggesting an irreversible process of policy Europeanisation. Yet, not only the policy initiatives but also the parameters of the debate are changing rapidly according to the (frequently structural) changes in the port industry. In any case, the search for a long-term strategy and progress towards a European Port Policy has and to a certain extent does acknowledge the importance of the diversity of European ports.

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