

**POSITION PAPER OF THE EUROPEAN TUGOWNERS ASSOCIATION ON**  
**COMMUNICATION (COM (2013) 295 final**  
**AND**  
**REGULATION (COM (2013) 296 final on ports policy**

**1. LEGISLATIVE PRECEDENTS**

After the failure of passing the vote in the European Parliament of Port Packages I and II, the European Commission adopted a new Communication on ports policy in 2007<sup>1</sup>. It announced a number of “soft law” measures consisting of guidelines on state aid, environmental issues, best practices by bench marking through port performance indicators and it announced a close cooperation and dialogue with stakeholders.

Since then the Commission adopted a new proposal for the development of the trans-European transport network (TEN-T) on 19<sup>th</sup> October 2011. Furthermore, the European Commission proposed a Directive on the award of concession contracts<sup>2</sup>, of horizontal application and including cargo handling, passenger terminal concessions and therefore also concessions granted to port towage operators.

**2. PRESENT LEGISLATIVE INITIATIVE**

On 23<sup>rd</sup> May DG MOVE published a Communication “*Ports: an engine for growth*”<sup>3</sup> and a Regulation proposal “*Establishing a framework on the market access to port services and the financial transparency of ports*”<sup>4</sup>.

Very surprisingly, the Commission decided to exclude cargo handling “*including port labour and terminal operations and passenger terminals*” from the scope of application of the Regulation.

**3. PREVIOUS POSITION OF THE ETA REGARDING PORT PACKAGES I AND II + SOFT LAW APPROACH**

The provision of towage services in a port is a capital intensive operation requiring significant medium to long term investments: tug operators are among the largest investors in ports together with the port authority itself and the terminal operators. Hence they should be seen as long term partners in the future of any port.

It is estimated that European Tugowners Association members’ vessels today represent an investment of over 2 billion euro in the port industry in Europe. Members employ approximately 8.000 qualified and highly skilled officers and crew to deliver the vital standards of safety afloat and necessary in safeguarding the environmental and social interests of the ports.

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<sup>1</sup> {SEC(2007)1339}{SEC(2007)1340}

<sup>2</sup> COM (2011) 897 final

<sup>3</sup> COM(2013)0295 final

<sup>4</sup> COM/2013/0296 final - 2013/0157 (COD)

The ETA supports the principal of a level playing field in the provision of port services. However it does not endorse a “one size fits all” legislative approach. Each port represents unique physical challenges from the length and complexity of the channels, the nature of tides, depths and currents to the presence of locks, traffic density and frequency to dock, jetty design and of course ship types, not to mention in some instances the extensive leverage of certain shipping lines and terminal operators with the Port Authorities and other port service providers. Accordingly, “one size fits all” in towage is self-defeating and would undoubtedly compromise safety and stifle innovation.

A port authority has the responsibility of ensuring the protection of the environment and its port and location; it has therefore to satisfy itself that the towage operation meets satisfactory standards. Equally, it aims to maximize the shipping business in the port while remaining financially viable. The towage industry has consistently worked to reduce costs whilst increasing standards of service and safety, and is keenly aware of its responsibility towards the competitiveness of the port. The reduction in tug numbers by virtue of greater power and maneuverability in fewer, more innovative vessels is indicative of this. In addition, the consolidation within the towage industry is largely a result of competition: whilst smaller ports are unable to provide a sufficient market place for more than one tug owner, larger ports and certainly the largest witness strong competition.

Every tug company should have to meet the demands of the port authority with regard to providing the necessary level of service, availability and capacity of plant and competence of crew to achieve their mutual aims of ensuring that a ship’s arrival in, departure from and transit through the port is carried out without incident. Several towage operators already do so within a framework of public service obligation contract by virtue of which they are obliged to provide safe and efficient harbour towage services with the latter also effectively regulated by the relevant authority.

The members of the European Tugowners Association do not believe that there is a need for additional EU legislation or intervention to effectively achieve this and towage should therefore not fall under the scope of a Regulation or Directive. The state of play within the industry principally already fulfills the tenet of the proposed legislation.

The ETA therefore always promotes best practices and coordination among players within the nautical chain by collecting professional knowledge, agreeing to good and widely accepted standards and issuing guidelines on safety in ship design and pilotage and towage operations<sup>5</sup>

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<sup>5</sup> See for example the Joint ETA-EMPA Guidelines on Design and Layout of Harbour Towage Equipment and the European Nautical Platform

#### **4. POSITION OF THE ETA REGARDING THE PROPOSED REGULATION**

##### Justification by the EC to leave the Soft Law path

1.

The Commission's objectives to:

- improve hinterland connections
- fully optimize port services
- create confidence to attract investments

are evidently goals that can be shared by the ETA members.

##### Position of the ETA

The towage industry cannot agree with the proposed legislative action as the premise on which the proposed policy is based appears to be unreliable or inconsistent.

2.

By way of example the ETA refers to:

- The premise that port services have to be modernized in a number of TEN-T ports, whereby it is stated that total port costs can account for a significant fraction of the total costs associated with the logistics chain. The Commission quotes from its surveys that *“for some trades in traditional ports, costs of ports and ports terminal operations may exceed 30% of the total door to door logistic cost. In terms of internal repartition of costs, port infrastructure charges represent between 5-10% , technical-nautical services between 10-15% cargo handling between 45-60%”*.

These objectives and premises are obviously totally inconsistent with the fact that cargo handling is left out of the scope of the intended legislation<sup>6</sup>

3.

The same finding is illustrated in the impact assessment document (SWD (2013) 181) Volume 2, p. 14, where it is restated, based on recent study, that *“European labour costs typically represented between 40% and 75% of a general cargo terminal's operating costs and, even in the capital intensive container handling industry, they can be as high as 50% of total operation costs”*<sup>7</sup>.

4.

The ETA cannot share the Commission's premise that the soft law measures proposed in 2007 on a fair market access and on transparency had little or no impact. If such conclusion is correct, the question remains why generally welcomed and expected measures such as the introduction of clear rules on state aid in ports have not been proposed yet, despite several years of discussion within and between EU legislative bodies.

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<sup>6</sup> See Communication from the Commission, p. 7/3.2. and p. 8, 1<sup>st</sup> and 2<sup>nd</sup> paragraph.

<sup>7</sup> Source : « Dock labour and port related employment in the European sea port system », Prof. Theo Notteboom, June 2011

5.

Subject to further study, the ETA Executive Committee furthermore finds that:

- a) The proposed regulation almost entirely deals with demands and a restriction placed on the operator and does nothing to encourage investment, modernization or development.
- b) The draft Regulation does not recognize the power of the customer (ship owners/operators) to influence price levels and to encourage new entrance service providers into a port.  
Except in the case where the port's managing authority determines that it is in the interest of the port and its customers that the number of service providers is limited, the number of providers in a port should be solely determined by the provider's ability to meet the requirement of the market for those services and the managing authority's operational requirements.  
Nobody who is involved in pricing services to customers should serve on a port user's advisory council that determines price charges to the same customer by another service provider (e.g. agents).
- c) The ETA does not see the need to establish an independent supervisory body in each port. It would merely increase costs and bureaucracy to port users.
- d) ETA cannot see how this new Regulation will attract competition in smaller ports where for example the number of ships' calls will not generate enough turnover to support two providers. Being a capital intensive industry in which costs are driven by hardware- as well as labour, a competitor will have to come with equipment superior to that of the established provider. In order to attract customers, he, however, pricewise will have to compete against the provider with the "cheaper" equipment. This price war might eliminate one of the contenders and in fact it will not advance the port in the sense of a modern European harbour network.

The effect of competition in a port where there is insufficient business to support more than one towage operator is to prohibit investment in new plant and equipment since by its very nature plant and employees are highly underutilized as tugs are generally employed to carry out two to three jobs a day each of three hours duration.

- e) The ETA fully supports transparency and accountability where public money is involved.
- f) The ETA feels that any complaints that can be leveled at towage services can be effectively dealt with by existing EU legislation.

### Conclusion

The ETA cannot support the present draft Regulation and strongly recommends that the soft law approach as announced in the 2007 Communication should be maintained. The approach of leaving out cargo handling and passenger terminals is inconsistent with the Commission's own findings on presumed deficiencies in some of the port services throughout Europe.

Indeed with regards to the towage category of port services the *raison d'être* of the proposed Regulation will actually run counter to the challenges that the Commission has identified to address.