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NO 23

Special Report

Maritime transport in the EU: in troubled waters — much ineffective and unsustainable investment

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(pursuant to Article 287(4), second subparagraph, TFEU)

Audit team

The ECA's special reports set out the results of its performance and compliance audits of specific budgetary areas or management topics. The ECA selects and designs these audit tasks to be of maximum impact by considering the risks to performance or compliance, the level of income or spending involved, forthcoming developments and political and public interest.

This performance audit was produced by Audit Chamber II — headed by ECA Member Henri Grethen — which specialises in investment for cohesion, growth and inclusion spending areas. The audit was led by the Reporting Member Oskar Herics, supported by Thomas Obermayr, Attaché of private office; Pietro Puricella, Principal Manager; Luc T'Joen, Head of Task; Kurt Bungartz, Luis de la Fuente Layos, Rafal Gorajski, Enrico Grassi, Di Hai, Aleksandra Kliś-Lemieszonek, Afonso Malheiro de Castro and Christian Wieser, Auditors.

From left to right: T. Obermayr, E. Grassi, C. Wieser, P. Puricella, A. Malheiro de Castro, A. Kliś-Lemieszonek, O. Herics, L. T'Joen, R. Gorajski, D. Hai.

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Blue Belt: The policy framework for the Blue Belt environment consisted of two measures: further simplification of the Regular Shipping Service scheme, which applies from March 2014, and the development of an electronic manifest (the 'customs goods manifest'), making it possible to distinguish between EU and non-EU cargo on board a vessel, with the intention of facilitating the transport of EU goods. This new manifest will be a tool (amongst others) at the disposal of the issuer to declare the EU status of the goods. This measure applies as of 1 May 2016 for authorised issuers; non-authorised issuers will have the possibility to register proofs of EU status in a new central database managed by customs, expected to be fully functional as of October 2019. An e-manifest pilot project has been set up to harmonise the cargo manifest requested by national authorities when vessels arrive in or leave EU ports. The submission and exchange of this e-manifest will be done through the European Maritime Single Window prototype, developed by the EMSA.

Cohesion Fund (CF): The Cohesion Fund is aimed at strengthening economic and social cohesion within the European Union by financing environmental and transport projects in Member States with a per capita GNP of less than 90 % of the EU average.

Cohesion policy: Cohesion policy is one of the largest policy areas in EU spending. Its aim is to reduce development disparities between different regions by restructuring declining industrial areas and diversifying rural areas, and to encourage cross-border, transnational and interregional cooperation. It is financed from the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the Cohesion Fund (CF).

Connecting Europe Facility (CEF): The Connecting Europe Facility (CEF) has, since 2014, provided financial aid to three sectors: energy, transport and information and communication technology (ICT). In these three areas, the CEF identifies investment priorities to be implemented in the coming decade, such as electricity and gas corridors, use of renewable energy, interconnected transport corridors and cleaner transport modes, high-speed broadband connections and digital networks.

Core ports: Core ports are those EU seaports which are considered to be of strategic interest. The Commission set out a list of 104 such core ports in 2013. Member States are required to ensure that an appropriate connection exists between these ports and the rail, inland waterway and road networks by 2030.

European Regional Development Fund (ERDF): The European Regional Development Fund is aimed at reinforcing economic and social cohesion within the European Union by redressing the main regional imbalances. This is achieved through financial support for the creation of infrastructure and productive job-creating investment, mainly for businesses.

European Structural and Investment Funds (ESIF): The European Structural and Investment Funds (ESIF) cover five separate funds that aim to reduce regional imbalances across the EU, with policy frameworks set for the 7-year MFF budgetary period. The funds include: European Regional Development Fund (ERDF); European Social Fund (ESF); Cohesion Fund (CF); European Agricultural Fund for Rural Development (EAFRD); and the European Maritime & Fisheries Fund (EMFF).

***Ex ante* conditionalities**: *Ex ante* conditionalities are conditions, based on predefined criteria established in partnership agreements, which are regarded as necessary prerequisites for the effective and efficient use of the EU funding covered by those agreements. When preparing ERDF, CF and ESF OPs under the 2014-2020 programming period, Member States have to assess whether these conditions have been fulfilled. If they have not been fulfilled, action plans need to be prepared to ensure that they are fulfilled by 31 December 2016.

Glossary

Financial corrections: Financial corrections are aimed at protecting the EU budget from the burden of erroneous or irregular expenditure. For expenditure that is subject to shared management, recovering incorrectly made payments is the primary responsibility of Member States. Financial corrections can be made by withdrawing irregular expenditure from Member States' expenditure declarations or through recoveries from beneficiaries. Financial corrections can also be imposed by the Commission.

Gateway ports: Gateway ports are ports which serve the economic and industrial needs of their area of influence (hinterland). Mixed ports serve both gateway and transhipment traffic.

Innovation and Networks Executive Agency (INEA): The Innovation and Networks Executive Agency (INEA) is the successor of the Trans-European Transport Network Executive Agency (TEN-T EA), which was created by the European Commission in 2006 to manage the technical and financial implementation of its TEN-T programme. On 1 January 2014, INEA officially started working to implement parts of the following EU programmes: Connecting Europe Facility (CEF), Horizon 2020, and legacy programmes (TEN-T and Marco Polo 2007-2013).

Motorways of the Seas: 'Motorways of the Seas' is the term used to refer to the maritime part of the Trans-European Transport Network (TEN-T). It provides funding for: (a) maritime links between ports within the comprehensive network, or between a port within the comprehensive network and a third-country port where such links are of strategic importance to the EU; (b) port facilities, freight terminals, logistics platforms and freight villages located outside the port area but associated with the port's operations, information and communication technologies (ICT) such as electronic logistics management systems, and safety and security and administrative and customs procedures in at least one Member State; (c) infrastructure for direct land and sea access, (d) activities which have wider benefits and are not linked to specific ports, such as services and actions to support the mobility of persons and goods, activities for improving environmental performance, such as the provision of shore-side electricity that would help ships to reduce their emissions, making available facilities for ice-breaking, activities ensuring year-round navigability, dredging operations, and alternative fuelling facilities, as well as the optimisation of processes, procedures and the human element, ICT platforms and information systems, including traffic management and electronic reporting systems.

Operational programme (OP): An operational programme (OP) sets out a Member State's priorities and specific objectives, and how the funding (EU and national public and private co-financing) will be used to finance projects during a given period (generally 7 years). These projects must help to achieve a certain number of objectives specified in the OP's priority axis. OPs may receive funding from the ERDF, the CF and/or the ESF. An OP is prepared by the relevant Member State and has to be approved by the Commission before any payments can be made from the EU budget. OPs can only be modified during the period covered if both parties agree.

Port infrastructures: The infrastructure resulting from work to ensure that vessels can be berthed and moored safely (e.g. quays, dykes, breakwaters), make possible the transit of vessels between areas of water located at different levels (locks), or create facilities for vessel construction and repair (e.g. dry-docks).

Port superstructures: Fixed assets (e.g. sheds, warehouses, office buildings) built on port infrastructures, as well as fixed and mobile equipment (e.g. cranes) used in the port areas.

State aid: State aid is any form of direct or indirect financial support provided by public authorities to private sector undertakings. The Treaty on the Functioning of the European Union (TFEU) generally prohibits state aid within the common market unless it is duly justified. The EU's state aid rules specify where such support does not distort (or threaten to distort) competition. The European Commission has the exclusive power to assess whether state aid granted by Member States complies with these rules. Procedural decisions and actions taken by the European Commission are subject to review by the General Court and the European Court of Justice.

Glossary

Trans-European Transport Networks (TEN-T): The Trans-European Transport Networks (TEN-T) are a planned set of road, rail, air and water transport networks in Europe. The TEN-T networks are part of a wider system of Trans-European Networks (TENs), including a telecommunications network (eTEN) and a proposed energy network (TEN-E). The development of infrastructure within the TEN-T is closely linked with the implementation and further advancement of EU transport policy.

Transhipment port: Transhipment ports are ports where goods are loaded onto another vessel or, sometimes, onto another mode of transportation for transfer to a final destination.

Twenty Foot Equivalent Unit (TEU): Measurement unit of cargo capacity used to indicate the capacity of container ships and container terminals. This is based on the volume of a 20-foot-long intermodal container, used between different modes of transportation, such as ships, trains and trucks.

Executive summary

I

Seaports are economically very important in the European Union (EU). There are more than 1 200 commercial seaports in 23 of the EU's 28 Member States. They are the key nodes in the global trade network, since they handle around three quarters of the EU's cargo trade with non-member countries and more than a third of intra-EU freight transport. In 2013, the European shipping industry is estimated to have contributed around 1 % to the EU's GDP and supported employment for around 2.2 million people.

II

Investments in port infrastructures are eligible for EU co-financing through the European Regional Developments Fund (ERDF) and the Cohesion Fund (CF) under shared management, but also through the Trans-European Networks-Transport (TEN-T) and the Connecting Europe Facility (CEF) under the direct management of the European Commission. Overall, between 2000 and 2013, around 6.8 billion euros of funding was provided from the EU budget for investments in ports. In addition to funding from the EU budget, the European Investment Bank (EIB) financed port investments in the form of loans amounting to around 10.1 billion euros.

III

We assessed the Commission's and Member States' EU maritime freight transport strategies and the value for money delivered by EU-funded investments in ports, where we examined 37 new projects and five reassessed projects. Overall, our audit found that:

— The long-term port development strategies put in place by the Member States and the Commission did not provide a robust and coherent basis for planning the capacity needed in EU ports and for identifying the necessary EU and national public funding for port infrastructures;

— Funding in similar port infrastructures and superstructures in neighbouring ports has led to ineffective and unsustainable investments: based on the 30 of 37 projects examined and already completed between 2000 and 2013, one in every three euros (corresponding to 194 million euros for 12 projects) has been spent ineffectively so far. Around half of this funding (97 million euros of EU funding for nine projects) was invested in infrastructures which were not used or were heavily underused for more than 3 years after the works ended. This highlights shortcomings in the *ex ante* needs assessment and indicates a high risk of the amounts invested being wasted;

— This observation also applies to the five reassessed ports already examined in 2010. This reassessment did indicate poor value for money overall: the use of the EU-funded capacity for these ports was still inadequate after almost a decade of operations. The port areas in four ports were still at a very low level or empty. Overall, 292 million euros of the investments was considered to have been spent ineffectively;

— Cost overruns and delays are further illustrations of inefficiencies in the examined investments in port infrastructures. Overall, the EU-funded projects examined had cost overruns of 139 million euros. Moreover, 19 of the 30 completed projects faced delays, out of which 12 were delayed by more than 20 % of the planned project duration. Relative to the initially planned duration, the delays were of up to 136 %. Of the seven projects (corresponding to 524 million euros of EU funding) not yet completed at the time of the audit, six were also delayed;

— Many missing and inadequate links to hinterlands, such as missing road and rail connections, will need further public funding to make the initial port investments work properly;

— Both the internal coordination within the Commission and the procedure in place between the EIB and the Commission to assess proposed EIB loans for port infrastructures have not been functioning properly as the EIB does not share all relevant information with the Commission. Moreover, for some loan proposals, critical problems were highlighted internally within the Commission, but not signalled to the EIB in the form of a negative opinion by the Commission; and

— The Commission did not take the necessary actions in the area of state aid and customs procedures to enable ports to compete on a level playing field. The Commission's state aid control could have been more proactive and more effective by monitoring *ex post* whether the conditions under which earlier decisions (e.g. for concessions) were taken, remained unchanged or by refusing support to user-specific superstructures.

For example, projects which included superstructures used by private operators had been co-financed with around 92.5 million euros from the EU budget.

IV

In our report, we make the following recommendations:

— Put in place a monitoring of core port capacity, taking account of the Member States' plans for implementing their long-term strategies;

— Revise the current number of 104 'core ports' which are necessary to maintain an adequate level of accessibility for the EU as a whole;

— Set out an EU-wide port development plan for core ports, maritime waterways and canals;

— Work with the Member States to reduce the administrative burden and delays in project selection and implementation by promoting the principle of a national 'one-stop-shop' for the issuing, or refusal, of all permits and authorisations for port infrastructure-related investments. Moreover, a 'tacit agreement' principle (e.g. of 2 years) should be implemented as soon as possible;

— Strictly apply the ESIF Common Provisions Regulation and the CEF Regulation on financial corrections due to underperforming investments for the 2014-2020 period;

— Assess the possibility of excluding EU funding for port infrastructure for container transhipment and storage (e.g. construction of quays, docks and storage capacities) during the 2014-2020 period. In addition, superstructures which are not within the public remit should be excluded from EU funding, as these should be considered a commercial environment;

— Prioritise EU co-financing from both CEF and ESIF spending to core ports to improve their connections to their hinterlands;

— Fund port infrastructures other than connections to hinterlands only on the condition that there is a clearly established need, where EU added value is demonstrated and where there is a sufficiently large private investment component secured in the overall investment envelope;

— Ensure that all necessary loan information on proposed EIB loans is shared between the EIB and the Commission to facilitate robust assessments;

— Internally clarify, and consistently implement, the procedure for determining whether critical remarks should lead to a negative opinion on a proposed EIB loan;

— Issue state aid guidelines for seaports;

— Ensure consistency in the treatment of user-specific port superstructures;

— Increase the number of desk-based state aid investigations on ports and follow-up of earlier state aid decisions to ensure that the conditions present at the outset remain;

— Member States should systematically notify the Commission of all public financial support to ports in accordance with EU state aid rules;

— Ask Member States to periodically provide specific information on the type and number of customs procedures at individual core ports in order to assess whether ports are being treated equally;

— Improve the competitive position of maritime transport compared to other transport modes by further simplifying maritime transport and customs formalities, in particular by moving towards an EU ‘single window’.

Introduction

Main characteristics of port services in Europe

More than 1 200 commercial seaports in the EU

01
Ports are economically very important in the European Union (EU). There are more than 1 200 commercial seaports in 23 of the EU's 28 Member States. They are the key nodes in the global trade network: they handle around three quarters of the EU's cargo trade with non-member countries and more than a third of intra-EU freight transport. Liquid bulk accounted for 37 % of all cargo passing through EU seaports in 2014, followed by dry bulk (23 %) and containers (21 %). Moreover, there are around 400 million passengers per year using these ports[1].

02
In 2013, the European shipping industry is estimated to have contributed up to 147 billion euros (or around 1 %) to the EU's GDP[2]. It also supported employment for an estimated 2.2 million people. Of these, some 1.5 million people were directly employed by ports in the EU[3]. Ports also play an important role in linking islands and peripheral areas with the mainland.

03
The ports sector is a very heterogeneous one, with ports differing significantly in their size, type, organisation and in how they are connected to their hinterlands. Efficiency and productivity vary greatly between EU ports, and these differences have even increased in recent years[4]. Some 96 % of all freight and 93 % of all passengers transiting through EU ports do so through the 329 key seaports identified as essential to the functioning of the internal market in the EU Guidelines on the Trans-European Transport Network (TEN-T)[5].

04
There are considerable differences even between these key ports: in 2012, the three largest EU ports (Rotterdam, Hamburg and Antwerp) alone accounted for about a fifth of cargo movements, partly due to their proximity to major production and consumption markets in north-western Europe. In contrast, the combined activity of the nine largest Mediterranean ports in the EU Member States comprised less than 15 % of total cargo movements[6].

1 Eurostat maritime transport and business statistics data.

2 Oxford Economics, 'The economic value of the EU shipping industry — update: a report for the European Community Ship Owners' Association (ECSA)', February 2015.

3 European Commission 'Europe's Seaports 2030: Challenges Ahead', Memo/13/448 of 23.5.2013.

4 SWD(2013) 181 final of 23 May 2013 'Impact assessment accompanying the document Proposal for a Regulation of the European Parliament and the Council establishing a framework on market access to port services and financial transparency of ports'.

5 Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU (OJ L 348, 20.12.2013, p. 1).

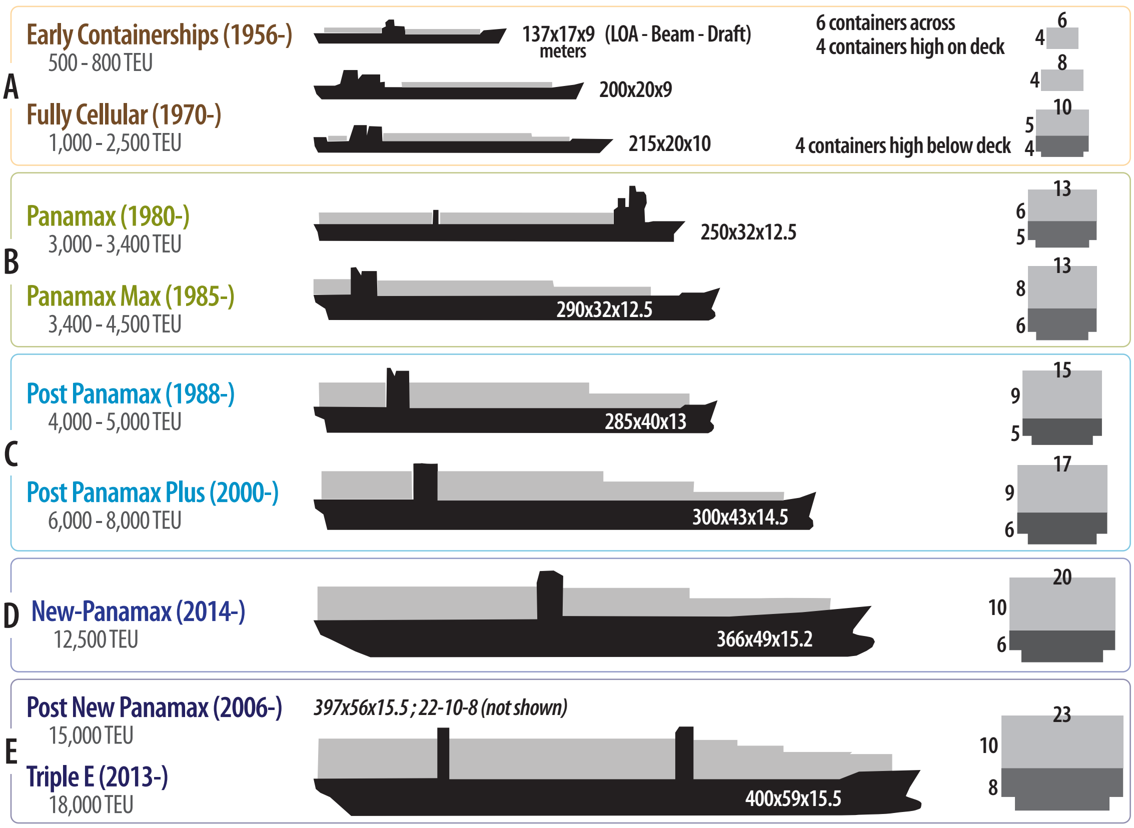
6 European Parliament Research Service (EPRS), 'Briefing EU Legislation in Progress — The liberalisation of EU port services', 7.12.2015; p. 3.

Size of ships increasing

05
In an attempt by global players to lower costs, increase operational efficiencies and improve the environmental footprint of maritime transport, ship sizes for all segments (e.g. tankers, container carriers) have continuously increased in recent years (see ***Picture 1***).

Picture 1

Evolution of sizes in shipping: an example for container carriers



Source: © 1998-2015, Dr Jean-Paul Rodrigue, Department of Global Studies and Geography, Hofstra University.

06

To give an indication of how large these vessels really are: a 'Triple E' vessel is 400 metres long (the equivalent of two football pitches, two ice hockey rinks and two basketball fields combined) and carries 18 000 TEU (more recently up to 22 000 TEU). If the same load were to be put onto lorries, these lorries would occupy an entire lane of the motorway from Amsterdam to Paris with a 'wall of trucks' (see ***Picture 2***).

Picture 2

Example of the load carried by a 'Triple E' vessel

Source: ECA.

07

Larger vessels result in lower transport costs for shipping. There is a cascade effect: ships that have become redundant because of the newly built mega vessels are deployed on other trade lanes, replacing other vessels, which in turn replace others and so forth, ultimately putting the smallest ships out of operation. Finally, deploying larger ships requires new infrastructure and also has an impact on competition between port authorities and port operators.

Services offered by port operators

08

The port sector brings together a broad range of industries, such as the petrochemical, steel, automotive, manufacturing and energy distribution industries.

09

Port services include the provision of:

- general transport infrastructure (e.g. maritime access channels, quays) and ancillary infrastructure equipment (e.g. dredging, ice-breakers);
- technical nautical services: pilotage, towing and mooring (usually commercial services)[7];
- operational infrastructure and 'superstructures' (e.g. berths and cranes) which are usually provided by terminal operators; and
- passenger-handling and cargo-handling services.

Main policy and legislative initiatives in relation to ports

Port services and investments in infrastructure

10

In 2013, the Commission issued a communication, including an action plan[8], identifying a number of recent maritime transport trends, which often require significant upgrades of existing port infrastructure. These concern

- the increase in the size and complexity of seagoing vessels requiring greater peak capacities when unloading cargo or embarking a higher number of passengers;

7 'Pilotage' is the guiding of a vessel into and out of the port (compulsory following international safety requirements); 'towage' is assisting a vessel in manoeuvring in and out of a port using a tug boat, while 'mooring' concerns the operations for connecting the ship to the quay.

8 COM(2013) 295 final of 23 May 2013 — 'Ports: an engine for growth'.

— the substitution of oil and refined products with gas and alternative fuels, such as liquefied natural gas (LNG), leading to large gasification facilities and shore-side electricity supply[9], and

— port security aspects, as ports can also serve as access point for drugs, weapons, contraband goods and chemical, biological, radiological and nuclear materials[10].

11
Furthermore, the Commission presented a legislative initiative[11] aimed at making the port services market more easily accessible and establishing common rules on financial transparency and on the charges to be applied by managing bodies or providers of port services.

12
While two previous proposals to regulate these issues in 2004 and 2006 had been rejected by the European Parliament, or significantly modified and subsequently withdrawn by the Commission, the Council adopted a provisional position in October 2015, and the Parliament also adopted a provisional position on this 2013 proposal for a regulation in March 2016, thus paving the way for an agreement in the discussions between the legislative bodies.

‘Blue Belt’ initiative and customs procedures

13
Compared to other transport modes, shipping is disadvantaged by the fact that ships leaving a Member State’s territorial waters (12 nautical miles from shore) are considered as moving out of the EU customs territory, which means that goods have to go through customs formalities both on departure and arrival at EU ports, resulting in delays and higher costs. This problem of distortion between transport modes has existed since 1992, and in 2013, the Commission issued a communication on measures to simplify administrative and customs formalities (the ‘Blue Belt’ initiative)[12] which led to changes in customs legislation. Work to set up national centralised points for reporting data (‘national single windows’) is ongoing for transport reporting formalities (complying with the requirements of the Reporting Formalities Directive (RFD))[13], the objective of which is to simplify and harmonise the administrative procedures for maritime transport by making the electronic transmission of information standard and by reducing reporting formalities. In parallel, electronic customs systems are being developed over a transitional period lasting until 2020, in order to gradually adapt to the new, modernised Union Customs Code requirements.

9 Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure (OJ L 307, 28.10.2014, p. 1) requires all seaports on the TEN-T core network to be equipped with LNG refuelling points and shore-side electricity supply by the end of 2025.

10 Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security (OJ L 310, 25.11.2005, p. 28) and Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security (OJ L 129, 29.4.2004, p. 6) require the Commission to carry out inspections together with the competent national authorities to ensure that the relevant security measures are applied in EU ports.

11 COM(2013) 296 final of 23 May 2013 ‘Proposal for a Regulation of the European Parliament and the Council establishing a framework on market access to port services and financial transparency of ports’.

12 COM(2013) 510 final of 8 July 2013 ‘Blue Belt, a Single Transport Area for shipping’.

13 Directive 2010/65/EU of the European Parliament and of the Council of 20 October 2010 on reporting formalities for ships arriving in and/or departing from ports of the Member States and repealing Directive 2002/6/EC (OJ L 283, 29.10.2010, p. 1).

14
As regards customs controls, a new modernised Union Customs Code has been adopted[14], replacing the 1992 Customs Code[15]. This lays down the overall framework governing the work of the Member States' customs authorities.

State aid

15
The funding of infrastructure that is not to be economically exploited does not constitute state aid within the meaning of Article 107(1) of the Treaty. Such funding therefore cannot be checked by the Commission. State aid does not include, for example, the funding of infrastructure that is used for activities that the state normally performs in the exercise of its public powers (for instance lighthouses and other equipment for the needs of general navigation including on inland waterways, flood protection and low water management in the public interest, police and customs). Furthermore, the funding of infrastructure that is not used for offering goods or services on a market (for instance roads made available for free public use) does not constitute state aid. However, the funding of infrastructure that is to be exploited economically, such as port infrastructures, falls under state aid rules. Public funding of port infrastructures and/or financial support granted to port authorities may distort competition between ports, since it may allow them to charge shipping companies lower prices in order to attract traffic. This may also be true of indirect aid to these economic operators (i.e. terminal operators) and users if they do not pay market price for port infrastructure. Any state aid needs to be reported to the Commission so that its compatibility with the internal market can be assessed.

16
The new General Block Exemption Regulation (GBER)[16], which came into effect in July 2014, defines cases when state aid can be granted to companies without notifying the Commission in advance. The Commission is currently considering defining non-problematic investments in ports in the GBER (i.e. the categories of port investments which do not need to be notified).

14 Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269. 10.10.2013, p. 1). The main provisions will apply with effect from 1 May 2016.

15 Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).

16 Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

Funding of port infrastructure

Current main trends in shipping

17
The vast majority of port authorities in Europe are publicly owned. The port authority owns the basic infrastructure and leases it out to port operators, usually by means of a concession, while retaining all regulatory functions ('landlord' model). Port operations are run by private companies, which provide and maintain their own superstructure, including buildings and cargo-handling equipment at the terminals. In the UK, some of the larger ports (such as Felixstowe, Manchester, Liverpool, Immingham and Southampton) are fully privatised.

18
Port authorities generally have limited autonomy in setting port charges (which are usually defined by the governments), but they nonetheless bear a significant share of the investment responsibilities[17].

19
In the major European ports, at least, a key factor contributing to the need for additional capacity and new port infrastructure and superstructures is the increase in vessel size. In addition to specific investment needs in order to adapt ports, mega-ships also create other challenges for ports: their significantly larger cargo volume leads to peaks in port activity, and creates the risk of congestion in port areas and the transportation links with economic hinterlands. These may be costly to mitigate. Moreover, due to peak loads, ports will need more land. Since mega-ships can only be profitable if they are handled very quickly in ports, there will also be an increasing trend towards automation. Finally, mega-ships increase the risk of unsustainable port infrastructure investments as significant numbers of containers and large volumes of cargo can be shifted from one port to another, thereby increasing the pressure on ports to offer attractive landing fees.

17 *Source:* ESPO, 'European Port Governance, Report of an enquiry into the current governance of European seaports', 2010, p. 7 to 11.

EU funding through ERDF/CF, TEN-T and CEF

20

Investments in port infrastructure have been co-financed from the EU budget through the European Regional Development Fund (ERDF) and the Cohesion fund (CF) under shared management, but also through the Trans-European Networks-Transport (TEN-T) programme and the Connecting Europe Facility (CEF) under direct management.

21

Overall, between 2000 to 2013, around 6.8 billion euros of funding was provided from the EU budget for investments in seaports: 3 billion euros during the 2000-2006 programming period and 3.8 billion euros during the 2007-2013 period. In both periods, the bulk of the EU funding (around 91 %) came from the ERDF/CF, provided through Operational Programmes (see an overview per Member State in ***Annex I***).

22

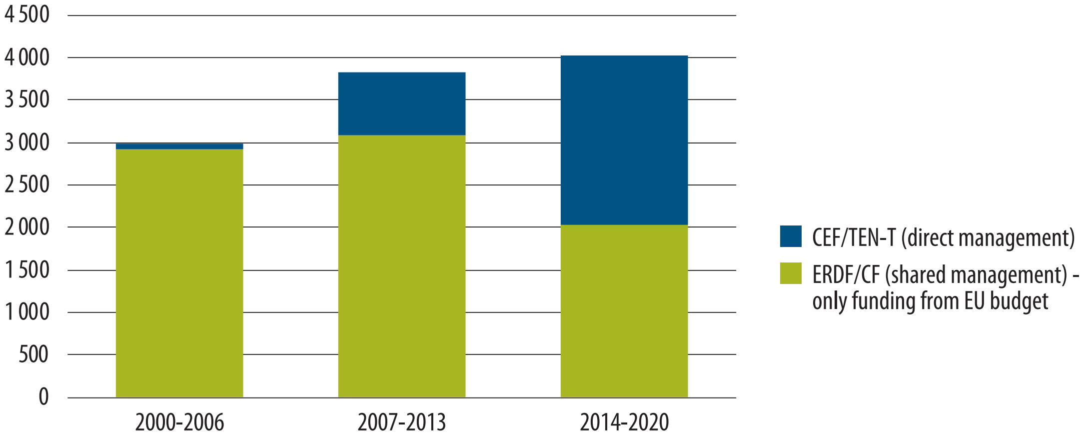
However, there is no complete information available on the total public and private investments in ports made in the Member States which are not EU co-funded.

23

For the 2014-2020 programming period, EU funding will remain important: the Connecting Europe Facility (CEF) has an indicative amount of 24 billion euros to co-fund transport investments (all modes of transport) either under direct management or using financial instruments (delegated to the EIB). Maritime transport projects, including investments in port infrastructure and in Motorways of the Seas (MoS), are eligible for this funding. Up to 900 million euros have been earmarked for MoS projects, while projects for the comprehensive network and projects for freight transport services will have respective budgets of up to 1 billion euros and 200 million euros at their disposal. For the first CEF call for proposals (2014), applications were submitted for 7.1 billion euros of co-funding for ports, and grants have been approved for a total of 907 million euros, mainly for 104 core ports (see paragraph 41) and MoS projects. In addition, around 2 billion euros in EU funding via the ERDF/CF has been earmarked for seaports: 1.5 billion euros for major (TEN-T) seaports and 0.5 billion euros for smaller seaports (see ***Figure 1***).

Figure 1

EU funding for port infrastructure in 2000-2006, 2007-2013 and 2014-2020 programming periods (in million euros)



Note: The amount stated for direct management for the 2014-2020 period is an estimate based on the data gathered from the first call for proposals for CEF funding.

Source: ECA based on date provided by DG Regional and Urban Policy and INEA.

Financial support from the EIB

24

According to the Treaty on the Functioning of the European Union (TFEU), the task of the European Investment Bank (EIB) is 'to contribute, by having recourse to the capital market and utilising its own resources, to the balanced and steady development of the internal market in the interest of the Union'[18]. In carrying out its task, the Bank shall 'facilitate the financing of investment programmes in conjunction with assistance from the Structural Funds and other Union Financial Instruments'. Moreover, according to the EIB Statute, the EIB shall ensure that its funds are employed as rationally as possible in the interest of the Union. It may grant loans or guarantees only '… where the execution of the investment contributes to an increase in economic productivity in general and promotes the attainment of the internal market'[19]. In addition to funding from the EU budget, the EIB has financed investments in port infrastructures and superstructures in the EU and neighbouring countries in the Mediterranean (Morocco and Egypt) in the form of loans for around 10.1 billion euros between 2000 and 2013.

18 Article 309 of the TFEU.

19 Article 18 of the EIB Statute.

Previous special report by the European Court of Auditors on ports

25

In 2012, in a previous special report, the European Court of Auditors identified problems in the planning and allocation of EU and national ERDF/CF funding for port infrastructure by examining 27 randomly sampled port projects in 2010. In particular, our report found that many of the projects had not been completed, some were not in use and others needed considerable further investment before they could be put into effective use[20].

20 Special Report No 4/2012 'Using structural and cohesion funds to co-finance transport infrastructures in seaports: an effective investment?' (http://eca.europa.eu).

Audit scope and approach

26
In this audit, the Court assessed the Commission's and Member States' EU maritime freight transport strategy and the value for money delivered by EU-funded investments in port services. In particular, our audit examined whether:

— the Member States and the Commission had put in place coherent strategies for developing port services for maritime freight transport, developed robust capacity planning and identified the EU and national public funding required for port infrastructures;

— EU-funded port infrastructure projects (selected between 2000 and 2013) had been completed within budget and on time, and implemented effectively to improve port services for maritime freight and the transport of goods to the port's hinterland; and

— the Commission had taken the necessary action as regards state aid and customs procedures to enable seaports to compete on a level playing field.

27
The audit consisted of a documentary review (including EU and national strategies for maritime transport, development plans for ports, and port master plans); interviews at the Commission and with representatives of regional and port authorities in Member States, and on-the-spot checks of ports and port projects. Interviews and a survey were also carried out with representatives of federations of port authorities, port operators, ship owners and logistics companies (key stakeholders)[21]. In addition, external experts from the OECD and the Free University of Brussels (VUB) provided us with an analysis of port capacities and projections of freight volumes.

28
The audit work was carried out between February 2015 and April 2016 both at the Commission (involving the Directorates-General for Mobility and Transport, Regional and Urban Policy, Competition, Economic and Financial Affairs, Taxation and Customs Union and Budget) and in five Member States: Germany, Spain, Italy, Poland and Sweden. These countries account for 60 % of all EU funds allocated to port infrastructure investments between 2000 and 2013 and, according to Eurostat, around 40 % (by value) of the shipped goods that passed through all EU ports in 2013.

21 The Federations consulted were the European Sea Ports Organisation (ESPO), The European Ship Owner's Association (ECSA), the Federation of European Private Port Operators (FEPORT), and the European Association for forwarding, transport, logistics and customs services (Clecat).

29

In the five Member States covered in this report, our audit included:

— Audit visits to 19 seaports to examine the results of EU-funded investments in port infrastructure[22]. These ports were selected based on their location (i.e. their proximity to ports offering similar services), the overall amount of EU funding they received and the extent to which infrastructure had been built there for a specific private operator. We also selected ports identified in our previous report in 2012 as having infrastructure that was either empty or poorly connected to their hinterlands;

— Specific case studies on neighbouring ports on the north-west coast in Italy (Genova, La Spezia, Livorno and Savona) and on the Adriatic Sea in Italy, Slovenia and Croatia (North Adriatic Ports Association (NAPA) ports: Venice, Trieste, Koper and Rijeka) to assess the potential for, and the advantages of, inter-port collaboration, as well as a case study in Germany on the Nord-Ostsee-Kanal (NOK).

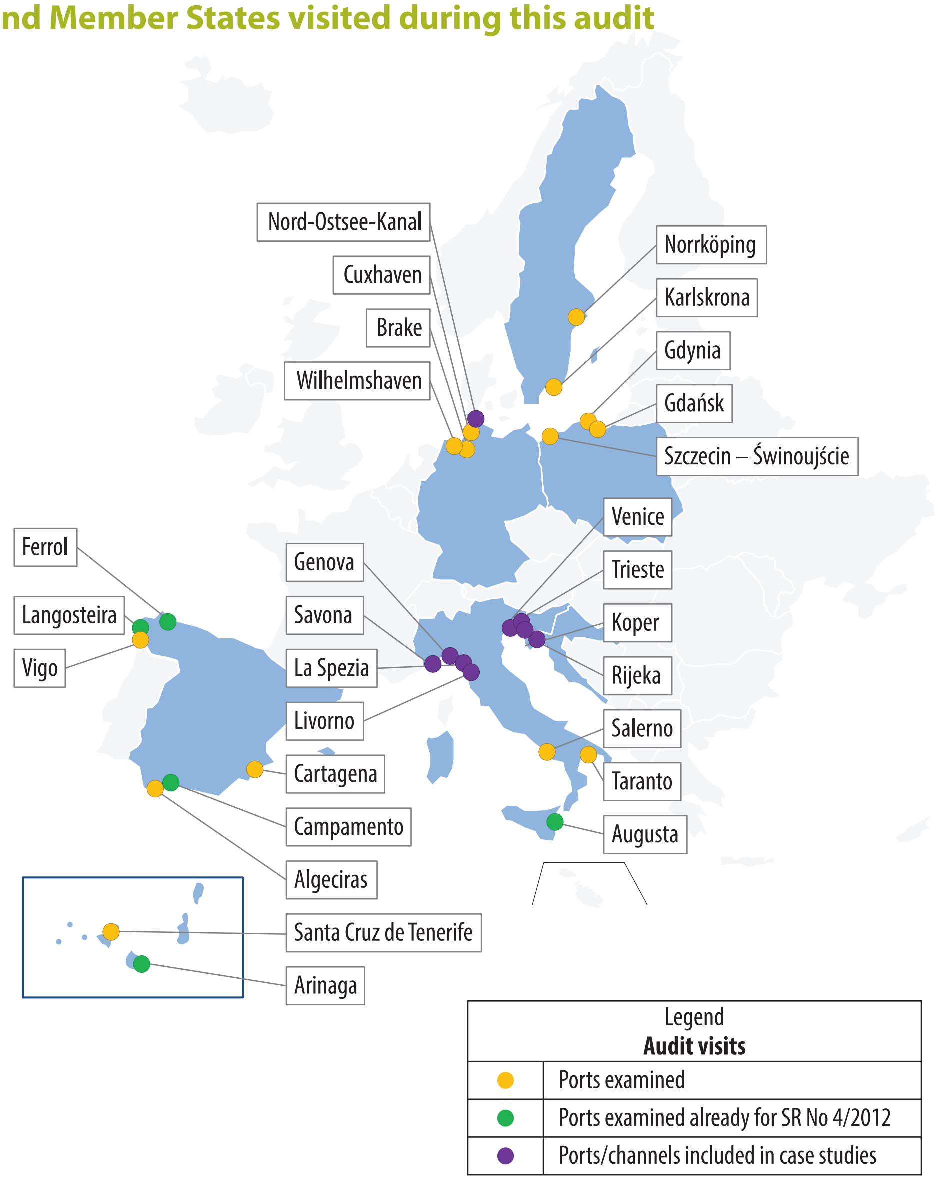
30

Our examination covered investments in port infrastructures which had received 1.4 billion euros of EU funding between 2000 and 2013 (around 20 % of the total EU co-financing). This is split between 1.076 million euros (37 newly examined projects), and 329 million euros (five reassessments of the results of projects already examined in 2010). Most of the projects examined were about increasing capacity: 24 of the 42 projects examined, representing 55 % of the EU funding (774 million euros) in our sample, involved constructing or extending quays and breakwaters. The second category was about improving port connections (road and rail: 17 projects, representing around 600 million euros in EU funding), while one acquisition of superstructures (e.g. cranes) accounts for the remainder of the expenditure examined. ***Picture 3*** provides an overview of the ports visited during this audit.

22 Four ports in Spain (Algeciras, Cartagena, Santa Cruz de Tenerife and Vigo), three ports each in Poland (Gdańsk, Gdynia and Szczecin-Świnoujście) and Germany (Brake, Cuxhaven and Wilhelmshaven) and two ports each in Italy (Salerno and Taranto) and Sweden (Karlskrona and Norrköping). The ports of Arinaga, Campamento, Ferrol and Langosteira (Spain), and Augusta (Italy) were reassessed (these were audited already in 2010).

Picture 3

EU ports and Member States visited during this audit



Source: ECA.

Observations

EU and national port strategies: absence of timely and coordinated implementation of well-planned extra port capacity was a key weakness

31

Investments in port infrastructure and superstructures are very costly and require long-term planning to ensure that they are profitable. This is why Member States should put in place a robust and coherent long-term strategy for developing their ports. Since 2013, the TEN-T Regulation has provided for EU-wide infrastructure planning by establishing a core and comprehensive network, along with technical standards and implementation deadlines. For investments in ports to be supported using EU funding during the 2014-2020 period, there is even a legal obligation to make these investments part of a wider, more general strategic port development plan (the '*ex ante* conditionality' rules[23]). This plan should improve the potential for increased effectiveness of future port infrastructure investments, because such a strategy should include the identification of already existing port capacity and the need for additional capacity, assess current and plausible future market demand, and explore port collaboration, synergies and specialisation.

32

We assessed whether the five Member States covered in this audit had put in place such a strategy in relation to port development and infrastructure planning.

All five Member States visited had developed national port development strategies, but robust implementation plans and coordination were an issue

33

Our audit found that all five Member States visited had put in place a long-term port strategy by the end of 2015. Spain had started drawing up documents supporting its strategy as far back as 1998 and 2000, and had completed these in 2005 and 2013 respectively. Poland had had a plan since 2007, Germany since 2009, Sweden since 2010 and Italy only since 2015. In Germany, this strategy had been revised in 2016, while Sweden's strategy was updated regularly (see ***Table 1***).

23 Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320); Annex XI — *Ex ante* conditionalities 7.1 and 7.3.

Table 1

Port strategies adopted by Member States visited during this audit

Member State	Name of port strategy	Year adopted
Germany	Gemeinsame Plattform des Bundes und der Küstenländer zur Deutschen Seehafenpolitik Nationales Hafenkonzept für die See- und Binnenhäfen Nationales Hafenkonzept für die See- und Binnenhäfen 2015	1999 2009 2016
Spain	Marco Estratégico del Sistema Portuario de Titularidad Estatal (MESPTE); Plan de Infraestructuras 2000-2007 (PIT); Plan Estratégico de Infraestructuras y Transporte (2005-2020) (PEIT); Plan de Infraestructuras, Transporte y Vivienda (2012-2024)'(PITVI)	1998 2000 2005 2013
Italy	Piano Strategico Nazionale della Portualità e della logistica	2015
Poland	Strategia rozwoju portów morskich do 2015 roku	2007
Sweden	Nationell plan för transportsystemet för perioden 2010–2021	2010, 4-yearly updates

34
Our analysis of these national strategies indicated that the mere existence of a strategy did not necessarily mean successful implementation of sustainable investments. Information about the national strategies is provided in ***Box 1***.

Data reported by port authorities incomplete and not always reliable

35
For the sample of ports covered by this report, we tested the reliability of the data on container transhipment capacity reported by port authorities (i.e. how much container traffic, in TEU, can be handled annually). Our analysis found that the port authorities of seven of the 16 ports covered in this report which had container transhipment activities did not report any aggregated capacity data[24]. For seven of the remaining nine ports which had compiled capacity data for containers, their actual available capacity is higher than that reported by the port authorities[25]. For two ports, the reported figure is higher than the one calculated by us[26]. This illustrates that even where port authorities do report capacity data, doubts remain as to the robustness of this data. This raises questions as to the basis on which decisions are taken for major investments in port infrastructure.

24 Cuxhaven, Brake, Salerno, Gdansk, Vigo, Ferrol and Karlskrona.

25 Wilhelmshaven, Taranto, Gdynia, Swinoujscie-Szczecin, Cartagena, SC Tenerife and Norrköping.

26 Algeciras and Augusta (which is empty).

Box 1

Member States’ long-term strategies: an overview

- **Germany** had a long-term national port strategy, but the Federal States (Bundesländer) decided on the main port infrastructure investments. There was no effective coordination between regional and federal authorities. The Federal state (Bund) has no responsibility in port planning, which is done at local and regional level. The direct involvement of the Bund in port planning at local level is neither sufficient nor sufficiently timely. However, the Bund is responsible for hinterland connections and the dredging of access channels.

- **Spain** had a comprehensive strategy in place, with a central body linked to the national Ministry of Public Works and Transport assessing and monitoring the need for port investments for the entire country on an ongoing basis. Although weaknesses were noted in some of the documents (e.g. no hinterland analysis and no search for synergies between neighbouring ports because of free competition), there was generally sufficient technical support for launching projects;

- **Italy** had also adopted a national strategy with a lot of elements able to serve as a basis for making good port investments, but this strategy had been adopted in 2015, and was not yet accompanied by an implementation plan. The first action implementing this strategy was to put in place a new port governance system, which led to the decision to merge various existing ports, thus reducing the number of port authorities and increasing the potential for coordination and cost savings;

- **Poland** had adopted a national strategy with many elements able to serve as a basis for making good port investments, but this strategy had neither been accompanied by an implementation plan nor properly monitored. As a result, the projects selected had not always been of the highest priority or sufficiently well-developed. Moreover, in some cases, non-maritime projects (e.g. typical city roads, quays with tourist attractions) had been financed from the allocation dedicated to maritime transport;

- Although providing sufficient capacity in its ports is a key objective for **Sweden’s** government, it is the municipalities that decide on investments in infrastructure for the country’s 52 main ports. The national government is responsible only for fairways (access to ports) and land connections to ports. This arrangement is reflected in the strategy, and only limited information on investments in port infrastructure was available at national Ministry level;

36
The situation is similar for data on job creation. Our audit showed that port authorities were generally unable to provide data on employment including the jobs created by their concession holders and external service providers. Therefore, the Commission’s information and data on job creation by ports is also very limited.

37
In 2013, the Commission launched a research project ('Portopia') under which ports data are gathered on a voluntary basis. Nevertheless, few Member States and port authorities provided such data, and methodological differences in analysing job creation effects were noted.

EU strategy on ports developed over time, but robust information on capacity planning still lacking

Commission adopted its long-term strategy on ports in 2013

38
For more than two decades, particularly since the Commission's first White Paper on transport in 1992[27], the EU has had in place a policy to support the development of ports and their infrastructures as a way to improve mobility. Since then, investments in port infrastructure, multi-modal terminals and interoperability have been considered key to increasing sustainable mobility in Europe.

39
In 1997, the Commission issued a Green paper on ports and maritime infrastructure[28]. In 2007, it adopted a communication highlighting the need to improve the main ports' connections with their economic hinterlands, and to achieve a more balanced mix of transport modes within the EU[29].

40
In 2013, the Commission issued a new communication in which it further developed its strategy for port development in the EU[30]. In this document, it established the link, for the first time, between the proposed infrastructure investments and the EU funding available under CEF during the 2014-2020 programming period. This was a significant improvement on its previous 2007 communication.

41
In addition, the Commission defined 329 ports as EU key ports, of which 104 were considered 'core' ports based on a set of predefined criteria[31]. The Commission aims to have these core ports connected to their hinterlands by 2030, while the deadline for the remaining 225 ports on the comprehensive network is 2050[32]. This has given core ports de facto priority status as regards access to EU funding for these connections.

27 (COM(92) 494 final of 2 December 1992 'White Paper 1992. The Future Development of the Common Transport Policy — A Global Approach to the Construction of a Community Framework for Sustainable Mobility'.

28 COM (97) 678 final of 10 December 1997 'Green Paper on sea ports and maritime infrastructure'.

29 COM(2007) 616 final of 18October 2007 'Communication on a European ports policy'.

30 COM(2013) 940 final of 7 January 2014 'Building the Transport Core Network Corridors and Connecting Europe Facility'.

31 SWD(2013) 542 final of 7January 2014. For example for 'volume-based ports': if 1 % of the EU transport volume passes via this port, it is considered a core port; if 0.1 % of transport volume, than the port is on the comprehensive network; other criteria apply for 'cohesion-based ports' (which are ports with low volumes but with a wide hinterland area to serve), or island ports.

32 Regulation (EU) No 1315/2013.

42

During our audit, some stakeholder organisations pointed out that the Commission strategy designated too many ports as core ports. Initially, the Commission had proposed 94 core ports, but additional proposals had been made during the legislative procedure[33]. However, even the Commission's initial proposal had already been significantly higher than the 50 core ports considered necessary to maintain an adequate level of accessibility for the EU as a whole[34].

Weaknesses in the Commission's capacity planning

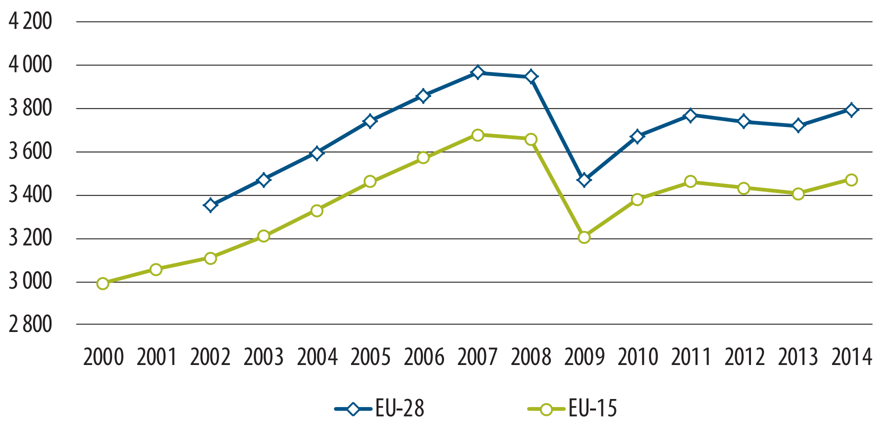
Commission and OECD expect port traffic to grow

43

Although the global economic crisis had a temporary negative effect on the overall volumes transported between 2007 and 2009, port traffic has been growing over the past 15 years (see ***Figure 2***). This trend is expected to continue: in 2013, the Commission forecasted a growth in port traffic of 50 % for EU ports by 2030. Also, the OECD expects a further increase in port traffic, but at a slightly lower level. The projected growth rates vary according to cargo type and ship type. Relatively slower growth rates are foreseen for the container sector. The expected growth in this sector for EU ports is 38 % for the period to 2030, while the growth is estimated to be higher in the other market segments: 46 % for liquid bulk, 50 % for dry bulk and 58 % for RORO. Moreover, this expected growth is not distributed equally worldwide: South Asia will have the fastest growth and Europe the slowest[35].

Figure 2

Overview of volumes (in gross weight in million tonnes) transported by sea (2000-2014)



Source: Eurostat, 'Maritime ports freight and passenger statistics', January 2016.

33 Annex II of COM(2011) 650 final of 19 October 2011.

34 European Commission, 'Ports and their connections within the TEN-T', 29.6.2010. Study undertaken by NEA, TNO and the University of Leeds.

35 OECD and ITF. (2015), *ITF Transport Outlook 2015*, OECD Publishing, Paris (http://dx.doi.org/10.1787/9789282107782-en).

The Commission does not monitor the capacity of core ports

44

Our audit showed that the Commission did not receive detailed and up-to-date data from the Member States on their available capacity, the capacity they actually used or their future capacity needs. As a result, there was no EU-wide monitoring of the capacity of the EU's 104 core and overall 329 key ports. In the absence of such information, the Commission has to date not been in a position to put forward an EU-wide port development plan. As nobody (neither at EU nor at Member State level) had a strategic overview of which ports needed funding and for what, many neighbouring ports invested simultaneously in similar container transhipment infrastructure and superstructures.

Risk that Commission's projection of required port capacity is overestimated

45

Based on updated traffic projections[36] and comparison with other studies and reports which included forecasts[37], the Commission estimated in 2013 that the average capacity utilisation of all ports in the EU was around 90 %, and that there was a risk of port congestion in the years to come[38].

46

By contrast, the OECD, which provided us with an assessment of future port capacity needs, estimated that:

— the EU port utilisation rate for containers is generally far below the global level of 67 %;

— there is significant variation of port capacity use between Europe's regions: 50 % in Scandinavian and Baltic ports; 56 % in north-west Europe, 61 % in the eastern Mediterranean and Black Sea; 62 % in the western Mediterranean Sea; and

— the expected capacity use is forecasted to be decreasing in several regions. For example, from 50 % to 30 % in Scandinavian and Baltic ports, and from 61 % to 50 % in the eastern Mediterranean and Black Sea.

36 SWD(2013) 181 final, Volume 1, Point 3.

37 ISL Port Traffic forecasts up to 2025; Port of Rotterdam, port vision 2025; Optimar, HIS Fairplay, 'Benchmarking Strategic Options for European Shipping and for the European Maritime transport System in the Horizon 2008-2018', 2010 Update.

38 SWD(2013) 181 final, Volume 2, Annex VII.

47

There is therefore a risk that the Commission overestimated the need for additional port capacity. This is particularly true for the specific regions indicated above.

48

In this context, we also noted a mismatch between the EU funding set out in the strategy and the trade flows: most goods from outside the EU enter the EU via the ports in the Hamburg-Le Havre range. However, more than 90 % of the EU funding for ports during the 2000-2013 period is provided under the ERDF/CF, and most of it is allocated to Mediterranean and Polish ports (see amounts allocated per Member State in ***Annex I***). The Member States and regional authorities decide which projects are to be funded from the ERDF/CF, except for major projects, which must be approved by the Commission.

49

An important waterway, the Nord-Ostsee-Kanal (NOK), was identified as a section of the Core Network in the CEF Regulation. However, the NOK was not part of the Core Network Corridors and was not selected for funding (see ***Box 2***).

Box 2

Nord-Ostsee-Kanal (NOK)

The NOK is the most heavily used artificial canal in the world, with 32 000 freight vessels passing per year. It is a strategic waterway for maintaining the competitiveness of the Baltic Sea states, of which Denmark, Sweden, Finland, Estonia, Latvia, Lithuania and Poland are members of the EU. It links the ports of Brunsbüttel and Kiel in northern Germany (see ***Picture 4***).

There is an urgent need to improve the existing infrastructure, both at the eastern entrance to the canal, where some locks are in poor condition, and at the western entrance. The additional cost of sailing around Jutland compared to passing through the NOK is around 70 000 euros. In addition, there are time gains to consider: sailing around Jutland takes 10 to 14 hours. According to an industry estimate, up to 2.2 billion euros could potentially be saved each year by making this infrastructure safe and reliable. In 2015, an application for a grant of 161 million euros in EU co-funding via the CEF to build a fifth lock chamber in Brunsbüttel was not selected. Despite the fact that this channel is part of the TEN-T Core Network, it was not a priority for CEF funding in 2015.

Picture 4

Nord-Ostsee-Kanal (NOK)

Note: The ports with red circles were those visited by our auditors.
Source: ECA.

EU-funded port infrastructures: unused and underused infrastructures, delays and cost overruns, and unsustainable investments because of funding of similar infrastructures in neighbouring ports

50

Given the weaknesses in capacity planning for port infrastructure at national and EU level, there is a significant risk of EU funding resulting in unsustainable investments, since the additional capacity created is not actually needed. For this audit, we visited 19 ports in five Member States to examine a total of 42 EU-funded projects, of which:

— 37 projects concerned newly examined projects; and

— five projects were being followed up, having originally been examined in 2010 (see Special Report No 4/2012).

51

In particular, we assessed whether:

— the additional port capacity created through investments had been fully used;

— the projects had been completed within time and budget;

— EU funding had been allocated to neighbouring ports for similar investments, and

— the coordination between the Commission and the EIB functioned properly.

EU-funded investments resulting in many unused or underused infrastructures

52

Investments in port infrastructure need some time to show results and, by their very nature, port projects are about building capacity for the long-term future (meaning that, in most cases, the return on investments is low and slow). The timeliness of investments is often crucial to their effectiveness, particularly in a very competitive environment such as maritime transport.

53

Our analysis of the 37 newly examined projects showed that 30 projects with 553 million euros of EU funding had been completed by mid-2015. Out of these 30 projects:

— 18 projects were being used as initially intended, representing EU funding of 359 million euros; and

— 12 projects were either not being used (empty) or were heavily underused, representing EU funding of 194 million euros — meaning that one in every three euros has been spent ineffectively so far[39]. Around half of this funding (97 million euros of EU funding for nine projects[40]) was invested in infrastructures which were not used or were heavily underused for more than 3 years after the works ended[41]. This highlights shortcomings in the *ex ante* needs assessment, and indicates high risks of waste of the amounts invested. This observation also applies to the five reassessed ports which have been in operation for almost a decade (see paragraph 63).

54

The remaining seven projects in our sample (524 million euros of EU funding, mainly in Italy) were not yet completed at the time of the audit. These seven projects were therefore not included in our analysis of their actual use.

55

Detailed information on the ports and the projects examined can be found in ***Annex II***. ***Box 3*** below provides two examples of well used infrastructures and two examples of empty or underused EU-funded port infrastructure projects. Further examples of unused and underused infrastructures can also be found in ***Box 4***, ***Box 6*** and ***Box 8***).

39 Methodology applied: this amount has been determined taking into account the detailed assessment of the use of the port infrastructures audited at the time of the audit visit. If a port was considered to have been empty or heavily underused applying internationally accepted criteria, the project expenditure was calculated in accordance with the degree of underuse.

40 This concerns the three projects audited in Cuxhaven, two projects in Wilhelmshaven, and one of the projects audited in Taranto, Cartagena, Santa Cruz de Tenerife, and Karlskrona: only Poland did not have projects which were unused or heavily underused more than 3 years.

41 This refers to the 'Results Measurement (ReM) Framework' introduced by the EIB. On this basis, the EIB systematically uses two periods to assess the quality and soundness of its lending operations: one at project completion, and another one at project completion + 3 years (see http://www.eib.org/projects/cycle/monitoring/rem.htm?lang=en).

Box 3

Examples of well-used port infrastructure:

1. Port of Norrköping: widening and deepening of the fairway access and reinforcement of existing berths

This project contributed to safer navigation, in accordance with international norms. Existing restrictions for darkness, visibility and wind were reduced and this allowed 24-hour access to the port, 7 days a week, for vessels of a much larger size. Also the ability for vessels to meet in the fairway, achieving time savings and security gains was enhanced, and positive environmental impacts in terms of an increased filling factor of larger vessels were also achieved. The EU co-funded this project with 3.5 million euros out of a total cost of 35.3 million euros.

2. Szczecin road connection to the port

The construction of the stretch of 2.63 km of road was completed in 2009, and the road infrastructure is being used. The main project outcome was improved road access to the port of Szczecin (see ***Picture 5***) avoiding the former road with many traffic lights. Although there are critical last mile connection problems, the improvement of the road access to the hinterland is visible, reducing the road congestion to and from the port, and improving the safety of the inhabitants. The EU co-funded this project with 23 million euros out of a total cost of 28 million euros.

Picture 5 — The new Struga street leading to the port

© Szczecin City Hall.

Examples of empty or heavily underused port infrastructure:

1. Taranto container terminal (Italy)

The Taranto Container Terminal entered into operation in 2002. The project resulted in considerable traffic volumes soon after the terminal commenced its activities. However, volumes decreased from 2006 onwards. The shipping line calling at the port of Taranto gradually stopped serving the port, and the terminal's operating company joined a group based in a competing neighbouring port (Pireaus), and ceased activities in Taranto in June 2015 (see ***Picture 6***). The concession agreement between the terminal operator and the Taranto port authority had provided that that the port authority should undertake additional infrastructure work, such as dredging. However, this work was never carried out. In the port of Taranto, 38 million euros in EU funding has been invested in a transhipment terminal and its hinterland connections during the 2000-2006 programming period. The terminal is currently unused.

Box 3

Picture 6 — Unused transshipment capacity in the port of Taranto

Source: ECA.

2. Multi-purpose terminal in the port of Cartagena (Spain)

In February 2013, the port of Cartagena finished building a 575-metre long dock, an adjacent area of 4.5 hectares and a storage space of 20 hectares for operations related to a future multifunctional terminal. The total combined cost of the two projects reached 62.8 million euros, and 29.7 million euros was paid. Currently, part of the area is used for dry bulk, scrap, and storing by-products from the nearby refinery. The other part (20 hectares) has not yet been paved and remains unused (see ***Picture 7***). EU funding worth 10.4 million euros from the ERDF had been allocated to this particular project.

Picture 7 — Empty area for a multifunctional terminal in the port of Cartagena

Source: ECA.

Delays and cost overruns in a number of projects

Delays in project implementation for 19 of the 30 completed projects

56
We had already observed and reported on significant delays in the implementation of port projects in our 2012 report resulting from administrative arrangements in place: 33 authorisations had been needed for building and operating a marina in Italy, and it took 22 years to obtain the necessary authorisations to start port constructions in Greece[42]. This indicated structural problems related to the issuing of permits and authorisations.

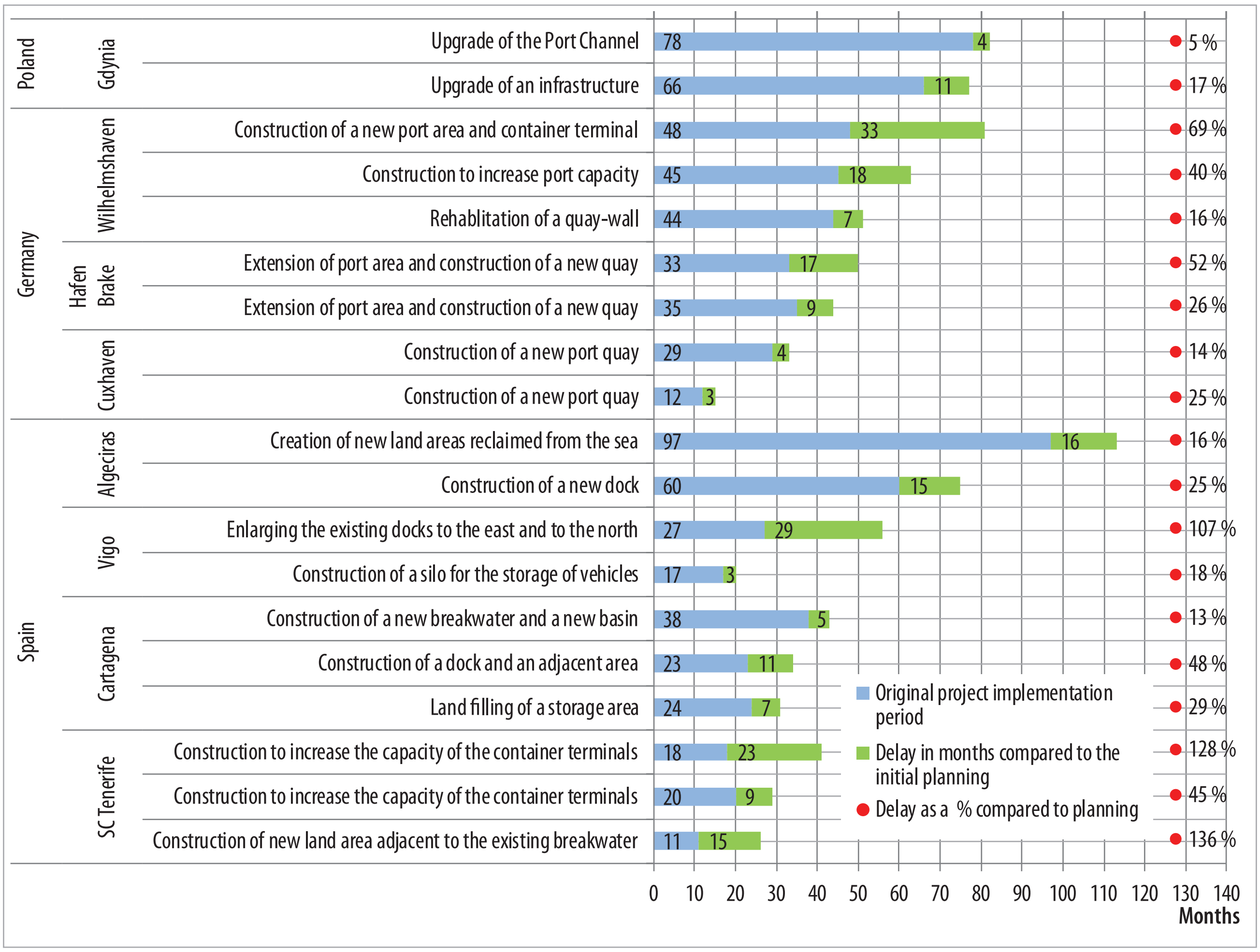
57
Our analysis of the 30 newly examined projects that had already been completed showed that 11 projects finished on time, but also that 19 projects did not finish on time. For those 19 projects, the average delay was almost 13 months, with delays varying between 3 months (provision of RORO terminal equipment in the port of Vigo, Spain) and 33 months (Jade-Weser-Port in Wilhelmshaven, Germany). Twelve of the 19 projects were delayed by more than 20 % of the planned project duration. Relative to the initially planned duration, the delays were of up to 136 % in the port of Santa Cruz de Tenerife (Spain).

58
Figure 3 provides details on the 19 (completed) projects concerned.

42 Special Report No 4/2012 on seaports infrastructures.

Figure 3

Overview of delays in the 19 completed projects



Source: ECA.

Administrative procedures can contribute to delays in project implementation: the case of Italy

59

As mentioned above, seven of the 37 newly audited projects had not yet been completed at the time of the audit, mainly because of administrative burden. These projects had been allocated almost half of the expenditure audited (524 million euros in EU funding). Six of these seven incomplete projects had also experienced delays, ranging from 13 months for dredging works to a minimum of 36 months for connections within the port of Salerno. National and regional administrative procedures can contribute significantly to delays in completing port infrastructure projects. Our audit showed that, in Italy alone, five of the six projects examined had been delayed, mainly due to problems related to the issuing of permits and authorisations, which highlights issues related to coordinating the various bodies involved. Detailed information on the incomplete projects can be found in ***Annex III***.

60

In addition, in several Member States, the procedure for adopting a port master plan (needed before infrastructure works can take place) involves a lot of intermediate bodies. For example, for the port of Taranto, a proposal for a port master plan submitted in 2006, involving the port committee, the High Council for Public Works, the Regional Authority for Environmental Protection, the Region concerned and the local municipality, had still not yet been adopted at the time of the audit visit (end of 2015).

Cost overruns for 16 of the 30 completed projects

61

On top of that, our audit also showed that only 14 of the projects examined did not have any cost overruns, meaning that 16 of the 30 completed projects had experienced cost overruns of 139 million euros in total. This applied mainly to seaports in Germany and Spain (the Italian projects have not yet been completed, so a final assessment cannot be made at this stage). The average cost overrun was around 8.7 million euros, with overruns varying between 0.2 million euros for an inspection building in the port of Vigo (Spain) and 67 million euros for transhipment infrastructure in the port of Algeciras (Spain). In comparison to the initially planned costs[43], the overruns were up to 38 % (for the construction of a new port quay in Cuxhaven). ***Table 2*** gives an overview of the cost overruns for the 16 projects in seven different ports.

43 This cost overrun applies only to the eligible costs at project level and not to the entire port investment cost, where cost overruns might be much higher.

Table 2

Overview of the cost overruns in the 16 completed projects

Member State	Port	Project to examine	Project costs (in euros)[1]	EU funding (in euros)[2]	Cost overruns (in euros)[2]	% of total cost
Germany	**Cuxhaven**	Herstellung Offshore Basishafen Cuxhaven Liegeplatz 8	31 945 019	15 942 509	3 300 000	10.3
		Östliche Erweitung Offshore Basis Cuxhaven Liegeplatz 9	41 436 573	18 800 000	15 600 000	37.7
		Offshore Basis Cuxhaven Errichtung der Hafensohle Liegeplatz 8	3 400 649	1 250 000	1 000 000	29.4
	Wilhelmshaven	Ertüchtigung der Niedersachsenbrücke	16 456 421	6 704 346	305 000	1.9
		Großprojekt 'Jade-Weser-Port'	146 856 096	32 930 149	17 000 000	11.6
	Hafen Brake	Norderweiterung Hafen Brake - 2. Ausbaustufe)	14 803 596	5 924 021	400 000	2.7
Spain	**Cartagena**	Ampliación Dársena de Escombreras. Fase 1	116 492 375	46 035 682	22 461 000	12.5
		Terminal Polivalente de Graneles	34 454 637	19 275 477		
		Relleno y Urbanizacion Terminal Polivalente	28 314 601	10 440 783		
	Algeciras	Infraestructuras Portuarias Y Auxiliares En Isla Verde (3ª Fase) En Algeciras	511 460 000	127 314 481	67 045 000	9.9
		Muelle Y Explanada Exterior Al Dique, Junto A Isla Verde	168 576 557	52 199 106		
	Vigo	Mejora De La Operatividad De Los Muelles Comerciales (1ª Fase)	48 249 668	27 973 501	5 449 000	11.3
		Ampliación Del Puesto De Inspección Fronteriza Arenal	2 188 957	750 884	236 000	10.88
	SC Tenerife	Nva. Base de Contenedores en la Dársena del Este del Pto. SC. Tenerife	17 770 802	7 860 602	4 301 000	24.2
		Nueva Base De Contenedores En La Dársena Del Este, 2ª Fase	15 605 808	6 387 113	1 153 000	7.4
		Tramo 1º Fase2ª Def. rellenos D. Este: quiebro 1º y 2ª alineación Espigón Cueva Bermeja	5 673 967	2 809 113	562 000	9.9
		Total[3]	**1 203 685 726**	**382 597 768**	**138 812 000**	

1 This concerns the total eligible costs at project level, not the entire port investment cost.

2 Cost overruns are relative to the total eligible cost for the project in question, not the entire port investment cost.

3 Excluding reassessed projects.

Source: ECA.

Poor value for money from EU funding

Reassessment of the results for five ports examined in 2010: poor value for money, even 5 years later

62

In 2012, we reported[44] that a high proportion (82 %) of the EU funding spent on a randomly selected sample of 27 port projects had been used ineffectively. In this audit, we reassessed five ports (Augusta in Italy, and the Spanish ports of Arinaga, Campamento, Ferrol and Langosteira) which had been particularly problematic in 2010 as the constructions had not been in use, and the EU-funded infrastructure had been empty or poorly connected. These ports had received 329 million euros in EU funding during the 2000-2006 period to build these infrastructures.

63

The key findings of this reassessment were as follows:

(i) Overall, effectiveness was very low: only around 5 % (representing 18 million euros of EU funding invested) of the overall capacity created was being used as initially planned after almost a decade of operations[45]. The fact that no significant level of port activity had taken place on average after almost a decade after completion of the works[46] highlights that there was no need to spend EU funding on these infrastructures, and that there was neither a sound business case, nor a proper analysis of costs and benefits up front. In total, we consider that 292 million euros of the EU-funded investments made are still ineffective in 2015. As indicated in our earlier report[47], Member States focus on absorbing EU funds rather than on the effectiveness of the investments in additional port capacity;

(ii) Three of the four Spanish ports (Arinaga, Ferrol and Langosteira) demonstrated a modest increase in their operations compared to 2010, but were still significantly below the maximum capacity of the EU-funded infrastructure (around 10 % for Arinaga and Langosteira, and around 25 % for Ferrol). The commercial port of Augusta has no activity in the EU-funded container terminal or the RORO-berth.

While the initial EU-funded investments in container storage areas in Campamento remain largely unused, ship repair activities do take place (see ***Picture 8***).

44 See Special Report No 4/2012.

45 Methodology applied: this amount has been determined taking into account the detailed reassessment of the use of the port infrastructures audited already a first time in 2010. If a port was considered to have been empty or heavily underused applying internationally agreed criteria, the expenditure was calculated in accordance with the degree of underuse.

46 The works were completed in Arinaga in 2008, in Campamento in 2004, in Ferrol in 2005, in Langosteira in 2011 and in Augusta in 2006.

47 Special Report No 4/2012, paragraph 22.

(iii) Since 2012, the Commission has followed up on three of these five ports by making a visit on the spot, or discussing the way forward at a central level. For example:

— For Arinaga, phase 3 of the port extension has been postponed by the Spanish authorities until there is sufficient activity;

— For the commercial port of Augusta, additional investment funding has been allocated by the Italian authorities to complete the works during the 2014-2020 period. The estimated cost of the outstanding works is 145 million euros, and the EU will co-finance this with 67 million euros from the ERDF (a Commission decision concerning the major project was issued on 27.3.2013). The recently adopted new national general strategic ports framework in Italy has led to a merger with the nearby port of Catania, and this could provide synergies with Augusta on RORO traffic, cruise traffic and bulk cargo. The outstanding works and the allocated EU funding should therefore be revised in light of the recent merger to increase the potential for greater effectiveness.

Picture 8

Unused port capacity created in 2004 in the port of Campamento: 16.5 million euros was invested in this infrastructure

Source: ECA.

Many missing and inadequate links will need further public funding to make the initial port investments work properly

64
In the 14 ports examined, connections to the network were either missing (in Italy and Spain) or inadequate (in Germany and Poland). In Italy (Salerno and Taranto), Spain (Algeciras, Ferrol and partially Langosteira), Germany (Jade-Weser-Port) and Poland (Szczecin-Świnoujście, Gdańsk and Gdynia), road and rail connections were either absent, delayed, or had not yet been planned, or they had experienced critical 'last mile' problems. This includes the Gdynia-Karlskrona MoS project between Poland and Sweden, where the construction of a ferry terminal needed to link the two ports has been postponed until 2019 (see ***Box 6***).

65
Significant additional public funding will be needed so that the projects concerned can work properly. For example, the additional cost of building rail connections to the Spanish ports of Algeciras, Ferrol and Langosteira is estimated at around 183 million euros. In Poland, an additional 350 million euros will need to be invested to increase to – 12.5 m the water depth of the 65 km access channel to the port of Szczecin, so that the bigger vessels for which the infrastructure was upgraded will be able to enter the port.

Funding of similar infrastructures increasing the risk of unsustainable investments

Shift in traffic between neighbouring ports

66
As Europe is only a small part of the globe in geographical terms, ports are divided into 'port ranges' For example there is the Hamburg-Le Havre range, or the Mediterranean range with an East and West Med range (see ***Picture 9***).

67
Ports within the same range compete against each other, while competition also exists between port ranges. During our audit, we examined the traffic volumes of the 171 largest EU container ports over the 2005 to 2014 period, i.e. ports with a container volume of at least 200 000 TEUs in 2005.

Picture 9

Mediterranean range, with an East and West Med range

Source: ECA.

68

Our analysis showed that activity at six of these 171 container ports had declined by more than 50 % compared to 2005: Savona and Taranto (Italy, see ***Box 3***), Medway and Thames port (UK), Rouen (France) and Malaga (Spain, see ***Box 5***). The decline of one port was related to the growth of a nearby, often larger port.

69

Moreover, we also identified noticeable shifts in traffic between other neighbouring ports covered by this report: between Salerno and Naples (Italy) and between Gdańsk and Gdynia (Poland). As soon as additional infrastructure became operational in one port, it had a negative impact on the volumes passing through the neighbouring port.

Funding of similar infrastructure, mostly aimed at increasing capacity

70
All projects examined involved work to increase the depth of access channels, enlarge turning basins, berths and storage areas, improve port connections and provide adequate cranes and yard equipment to efficiently handle the larger cargo volumes forecasted.

71
Our analysis identified 14 cases where similar investments had been made in neighbouring ports within the same range: several port authorities and port operators had invested simultaneously in additional capacity for transhipment infrastructure and superstructures despite the fact that unused capacity had been available in neighbouring ports. These similar investments had even been made in ports serving the same hinterlands located in the same Member State, indicating a lack of coordination in capacity planning at national level.

72
Such investments were considered unsustainable (see examples in ***Box 4***).

Box 4

Examples of similar investment plans in neighbouring ports

(a) Ports on the Italian North West coast (Genova, La Spezia, Livorno and Savona) in Italy

In Italy, all four ports on the North West coast (Genova, La Spezia, Livorno and Savona) have ongoing or planned investments to increase their current combined capacity of 3 730 000 TEUs by 50 % (or an additional 1 800 000 TEUs). These ports all compete for the same hinterland: in recent years, Savona has clearly lost market share to Genoa, as has Livorno, but to a more limited extent. Moreover, the current capacity is not being fully used: in 2014, container terminal utilisation rates were approximately 20 % in Savona, 65 % in Livorno, 74 % in La Spezia and 77 % in Genoa. There is no expectation that traffic will significantly increase in the years to come.

(b) Polish ports (Gdańsk and Gdynia)

In Poland, the Ministry of Infrastructure and Development simultaneously approved a significant extension of container terminals in Gdańsk and dredging in the port of Gdynia, both aimed at the same container business, having similar hinterlands, and without considering the extent to which the available existing capacity was being used.

Box 4

(c) Spanish ports (Cartagena, Algeciras and Ferrol)

In Spain, the ports of Cartagena, Algeciras and Ferrol all included in their growth strategy the capture of more traffic destined for/originating from the Madrid region, which is also a traditional market for other large ports (Valencia in particular). The capacity increases were undertaken without assessing whether there was enough traffic to cover the same hinterland.

(d) NAPA ports in Italy, Slovenia and Croatia (Venice, Trieste, Koper and Rijeka)

All NAPA ports (Venice, Trieste, Koper and Rijeka) aimed to attract more traffic and bigger vessels, but there was no strategy for increasing synergies among them once a ship had decided to call at a port in the North-Adriatic range. An obstacle to enhanced cooperation is the fact that these ports are located in three different Member States, with different governance systems both nationally and in individual ports, and with differing co-funding rates under the cohesion policy and CEF Regulations, which may lead to individual considerations prevailing over more collective ones.

73

A simultaneous increase in port capacity in neighbouring ports also carries the risk of additional price competition between these ports in order to attract the required additional traffic volumes. As a result, unless the overall traffic volume increases, capacity in all ports will remain unused or underused while, at the same time, the ports' profitability will decrease. In the case of transhipment ports, this risk is particularly high since shipping companies can decide to change ports of call in line with their own network approach.

Ineffective coordination between the Commission and the EIB on the funding of port infrastructure

74

According to the Treaty on the European Union, the task of the European Investment Bank (EIB) is to contribute, by having recourse to the capital market and utilising its own resources, to the balanced and steady development of the internal market in the interest of the Union. In addition to the 6.8 billion euros in EU funding (i.e. through ERDF/CF or CEF), several of the ports examined in the course of this audit also received a loan from the EIB, amounting to a total of 10.1 billion euros between 2000 and 2013.

75
Annex IV provides detailed information on the main characteristics of the Member States' port systems, and an overview of the EU and EIB funding support for the audited ports areas (2000-2013).

76
Before the EIB grants a loan, the Commission and the Member State concerned have to provide an opinion on whether the investments to be financed from the EIB's resources comply with the relevant EU legislation and policies[48]. The procedure for coordination between the Commission and the EIB is governed by a Memorandum of Understanding[49]. For the ports examined for this report, such consultation had taken place in four cases: Algeciras (Spain), Tanger-Med (Morocco), Taranto (Italy) and Jade-Weser-Port (Germany).

77
Our analysis found that only limited information was shared between the EIB and the Commission. For example, no loan amount was indicated, the beneficiary was not specified, the EIB's technical and financial appraisal and its assessment of risks to the effectiveness of Cohesion policy were not shared with the Commission. The information provided by the EIB limits the Commission's capacity to assess a case properly.

78
Moreover, the Commission does not have the power to block a loan proposal if it disagrees. As it happens, the Commission has never given a negative opinion on an EIB loan proposal, although there have been some highly controversial cases. The absence of a proper Commission response to EIB-proposed loans to support neighbouring ports outside the EU undermined the effectiveness of EU funding invested in EU ports. The example in ***Box 5*** for ports in the West Med range indicates that there was a lack of adequate coordination within the Commission services, and no signal of problems by the Commission to the EIB, and this led to overcapacity of transhipment infrastructures and unsustainable investments, as some of the ports lost significant volumes handled previously.

48 Article 19 of the Statute of the European Investment Bank (EIB).

49 Memorandum of Understanding (MoU) between the Commission of the European Communities and the European Investment Bank concerning working procedures for consulting the Commission on Global Loans, Mid-Caps Loans, Framework Loans, and Investment Loans under Article 21 of the EIB statute (13 June 2006); last amended on 13 December 2010. The MoU is currently being revised with the latest draft version dated September 2015.

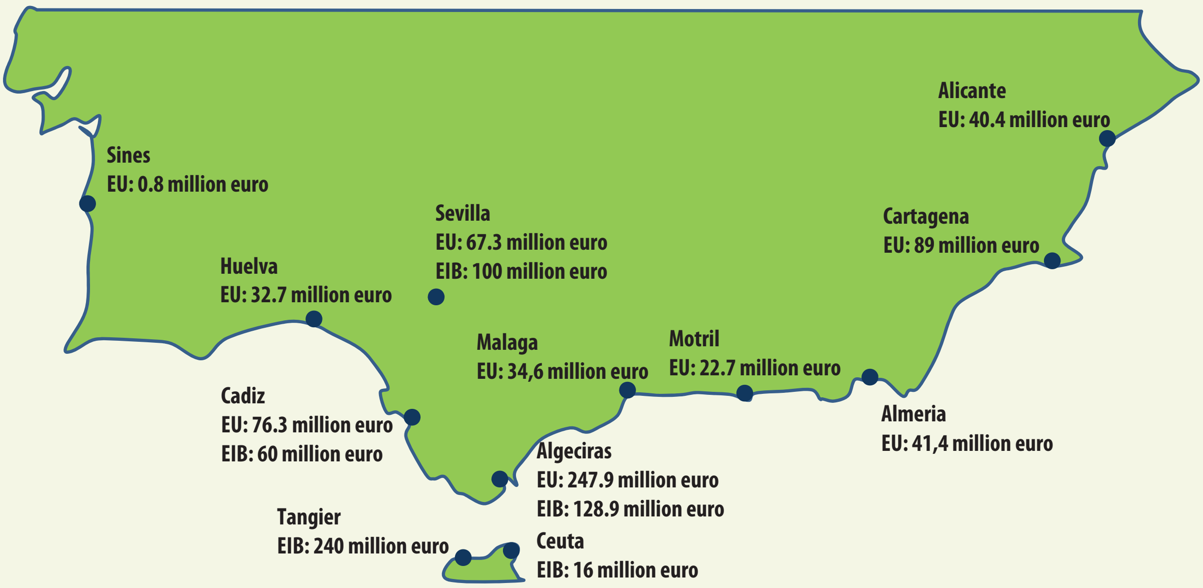
Box 5

Simultaneous funding of port infrastructure in neighbouring ports by EIB and from the EU budget led to unsustainable investments and EU ports losing significant volumes handled previously: the example of Tanger-Med port (Morocco) and ports in Spain and Portugal

Since 2000, more than 500 million euros from the ERDF/CF and 229 million euros in EIB loans has been provided to support infrastructure in several ports in Spain (Andalusia) and Portugal. The port of Algeciras (Spain) alone has received EU funding of around 248 million euros. In addition, the EIB provided a loan of around 129 million euros to increase capacity.

In 2008 and 2010, two EIB loans for a total of 240 million euros were provided with EU guarantees for the port of Tanger-Med (Morocco) to build additional capacity for handling container traffic of 8 million TEU. This port is in direct proximity to the port of Algeciras on the other side of the Strait of Gibraltar. Both ports specialise in transhipment, and are in direct competition with each other and with neighbouring transhipment activities (e.g. Cadiz, Malaga and Sines, see ***Picture 10***).

Picture 10 — Overview of port capacity publicly funded in the West Med range



Source: ECA.

Although a new terminal operator started operations in the newly built container transhipment terminal of the port of Algeciras (Spain), 30 hectares of transhipment area (representing 58 % of the EU funding of 144 million euros) was unused at the time of the audit, and the effectiveness of the EU investment in this port will depend on the capacity of the port authority to attract additional operators.

This, however, may negatively impact on the traffic volumes of neighbouring ports.

In addition, the neighbouring Spanish ports of Cádiz and Malaga experienced considerable reductions in container traffic between 2007 and 2015: by 53 % in Cádiz and by 92 % in Malaga.

79
Finally, the Commission does not obtain information on the EIB's final decisions on loan applications, nor a signed copy of the loan contract, with or without a guarantee provided by the EU. Nor is any final report submitted on the relevant project's implementation or on how the loan provided has been spent, or any other relevant information on whether or not a loan has been fully repaid.

EU funding at project level tied to outputs, but not to results during the 2000-2006 and 2007-2013 periods

80
During the 2000-2006 and 2007-2013 programming periods, the EU funding at project level needed to be linked to outputs, but not to results (i.e. outcomes or impacts). Even though some of the EU-funded investments were not actually in use (they were empty, heavily underused, or did not produce the intended objectives, results and impacts), their costs were therefore still eligible for EU co-financing under both the ERDF/CF and TEN-T programmes.

81
Box 6 provides one of the many examples where the project output had been achieved, but not the intended result.

Box 6

Project outputs achieved, but not producing the intended result — example of the Gdynia-Karlskrona Motorway of the Seas (MoS) project (ferry link between Poland and Sweden)

This MoS project, managed directly by the Commission's executive agency INEA, involved linking two ports: one in Poland (Gdynia), and one in Sweden (Karlskrona). It was aimed at reducing the amount of freight transported on roads, increasing the intermodal share on the corridor from 3 % in 2008 to 10 % in 2015 and 36 % in 2025). Key performance indicators (KPIs) were agreed, with dedicated monitoring to indicate the progress made each year towards the expected results.

The road and rail connections in the port of Gdynia were built, and the railway tracks were modernised in Sweden by the end of 2013. However, none of the intended project objectives (outcomes) were achieved because a vital element was missing to make it work: the ferry terminal in the port of Gdynia, which was a prerequisite for fully implementing the project, and which was essential to achieve its expected benefits, has not been built. Having originally been scheduled for completion during the 2007-2013 period, the terminal was postponed until 2016 as early as the application stage because the traffic volumes originally anticipated had been revised downwards by the port of Gdynia. Construction of the building has therefore been further postponed until the end of 2018 at the earliest. This means that the MoS as initially planned will at best, only become operational in 2019 (at least 6 years after completion of the examined project).

Box 6

The EU nevertheless paid 34.4 million euros for the outputs without being able to expect any real outcomes or impacts in the coming years: 17.3 million euros in EU funds from the ERDF on the Polish side for road and rail accesses (see ***Picture 11***), and 17.1 million euros from TEN-T on the Swedish side to modernise rail tracks. This was due to incorrect information from the beneficiary, insufficient monitoring by the INEA agency of the agreed KPIs, and inadequate grant agreement texts which allowed payments without results. Had the terminal not been included in the project application, the Swedish authorities would only have been able to apply for the usual TEN-T investment financing of 10 %, while in this case 20 % was co-funded because it was considered a MoS project.

Picture 11 — Road and rail connections in the port of Gdynia without a ferry terminal building to make the link to the port of Karlskrona

Source: ECA.

Creating a level playing field between ports: need to better ensure that common rules such as state aid and customs controls are applied consistently

82

Competition between ports can be quite intense if ports serve the same hinterland or types of goods and traffic. Granting public support to port authorities may however distort the market. The absence of state aid guidelines for seaports and differences in customs control practices between Member States can make one port more attractive than others for global shipping lines. We therefore reviewed whether the Commission had taken the necessary action as regards state aid and customs procedures to enable ports to compete on a level playing field.

Need to better enforce state aid rules for ports at Member State and Commission level

Risks of distorting competition through state aid identified in several cases

83

As far back as 2000, the General Court of the European Union clarified that the operation of publicly owned infrastructure, such as of an airport, may constitute an economic activity[50]; this principle was confirmed and further developed in the Leipzig Halle judgement in 2011[51].

Lack of clarity as regards port superstructures

84

However, our audit identified certain significant risks of distorting competition in the ports sector. For example, concession holders are responsible for financing the superstructures they use on their terminals (e.g. cranes, loading and unloading equipment and warehouses). This is why the Commission made a distinction between public (general) and user-specific infrastructure in its 2001 communication on ports[52]. Public financing of superstructures open to all users on a non-discriminatory basis was not to be considered state aid, while the co-funding of such equipment, either with a particular user in mind or for the benefit of a particular company that already had the concession[53], was to be considered state aid as it provided an advantage to that undertaking and may therefore affect competition.

85

We found a lack of clarity concerning the public funding of superstructures for ports: in principle, the terms of the 2014 call for proposals for CEF considered the funding of superstructures for ports to be ineligible expenditure. There were however two exceptions to this: superstructures could be funded under the multimodal part and (subject to certain conditions) under the 'Motorways of the Seas' part of the same call for proposals. As a result, several ports applied for EU funding for such equipment under the latter parts of the call for proposals. Moreover, the terms of the ESIF do not, in principle, consider the funding of superstructures for ports to be ineligible expenditure.

50 CJEU Judgment T-128/98 on 'Aéroports de Paris'.

51 Joint Cases T-455/08 Flughafen Leipzig-Halle Gmbh and Mitteldeutsche Flughafen AG versus Commission and T-443/08 Freistaat Sachsen and Land Sachsen Anhalt versus Commission, dated 24.3.2011.

52 COM(2001) 35 final of 13 February 2001 'Reinforcing quality service in seaports: a key for European transport', p. 11.

53 Unless the terms of the tender included this particular advantage for the winner, which would then provide an equal advantage to all bidders.

86
Overall, we identified 10 cases of user-specific superstructures being supported with EU funding in the ports examined, mainly in Poland (in the three examined ports Szczecin-Świnoujście, Gdańsk and Gdynia) and Spain (port of Algeciras). Projects which included cranes and transhipment equipment used by private operators had been co-financed with around 92.5 million euros from the EU budget. The Commission, which was notified of these cases by the Member States concerned in 2005 (Poland) and 2010 (Spain), authorised them without raising any objection to their financing. ***Box 7*** provides an example, and the full list can be found in ***Annex V***.

Box 7

Public funding of user-specific superstructures in Spain

In the Spanish port of Algeciras, 22 million euros of EU funds were invested for the purchase of eight dock ('ship to shore') cranes for a particular private terminal operator (see ***Picture 12***).

Picture 12 — EU-co-funded superstructures in the port of Algeciras

Source: ECA.

Follow-up of previous state aid decisions in the event of substantial changes

87
The EU system of state aid control is based on an *ex ante* assessment by the Commission and effective cooperation between the Commission and the Member States. Problems can arise where the conditions of notified aid have been substantially changed after the Commission decision, and there is no follow-up by the Commission to assess whether these changed circumstances result in a distortion of competition (see an example in ***Box 8***).

Box 8

Lack of formal notification in the event of significant changes — Jade-Weser-Port in Germany

In Germany, between 2008 and 2012, a new container terminal, the 'Jade-Weser-Port' (JWP) with a 2.7 million TEU capacity, was built in the direct vicinity of the deepwater port of Wilhelmshaven (one of the 104 'core ports'). The terminal's basic infrastructure was built by the State of Lower Saxony with the help of a grant. Along with national and private funding, the EU provided 33 million euros worth of funding. In addition, the EIB provided two loans totalling 325 million euros to finance the building of infrastructure.

In December 2008, the Commission decided not to raise any objection to the measures for which notice had been given (concession agreement with an international company for 40 years) because it did not consider these to be state aid[54].

However, the conditions communicated with the notification were substantially amended after the decision was made: two significant amendments to the concession agreement (signed in 2006), made in 2010 (even before the terminal had started operations) and 2014 respectively, significantly altered the initial conditions of the public tender. These amendments also had an impact on external shipping companies' ship-side charges[55]. On the whole, this had a negative financial impact of around 15 million euros as of October 2015 (less income, more expenses for interest rates) for the public entity granting the concession agreement with the private company. The German authorities did not notify these amendments to the Commission, even though it would have been appropriate to do so for the sake of establishing legal certainty, and the Commission itself did not follow up on the original decision to see whether the amended conditions distorted competition.

Although the publicly owned entity granting the concession was expected to operate at a profit to secure the loan that it took, it in fact made losses as Jade-Weser-Port is heavily underused: since the port opened in September 2012, container volumes, although increasing from 76 000 TEU (2013) to 429 000 TEU (2015), are only at around 16 % of the ultimate capacity of 2.7 million TEU that will exist once all works have been completed and the port becomes fully operational in the medium term (see ***Figure 4*** and ***Picture 13***).

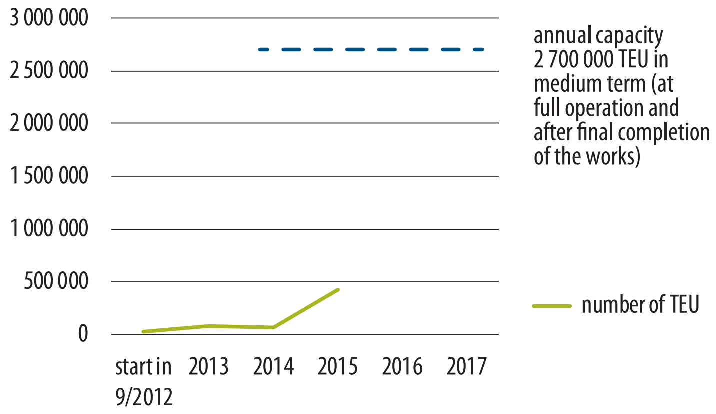
Due to the amendments of the concession agreement and the losses of the public granting entity amounting to 21.5 million euros at the end of 2014, both Lower Saxony and Bremen, joint owners of the entity, planned to provide 3 million euros (2015) and 5.5 million euros in 2016 for this entity.

54 Because the concession would provide for market conditions: the German authorities would not be able to provide discretionary subsidies and advantages to the concession holder; the port infrastructure would be open to all port users on a non-discriminatory basis, and a price charged for cargo-handling would be based on market conditions.

55 These concerned the postponement of concession fee payment and a change to guarantees for ship-side charges in favour of the company. They also reduced ship-side charges for a certain period in favour of external shipping companies.

Figure 4

Use of capacity created in the Jade-Weser-Port



Picture 13

Heavily underused transshipment port capacity in Jade-Weser-Port

Source: ECA.

A more proactive Commission role on state aid to ports necessary

Few cases of state aid notifications by Member States and a low number of complaints submitted to the Commission

88

Our audit showed that Member States had notified very few cases of state aid to ports in recent years:

— before 2007, the Commission had collected no data on port state aid notifications;

— between 2007 and 2010, in total only four cases of state aid for port infrastructure had been notified by Member States; and

— between 2011 and 2015, there were 27 state aid notifications (see ***Annex VI***).

89

Our audit showed that the Commission had received very few complaints:

— before 2007, no data had been available on complaints;

— between 2007 and 2011, there had only been one formal Commission decision in a complaint case, while all other complaint-based cases had been closed without a formal Commission decision (i.e. the cases had been closed following a preliminary assessment letter to which the complainant had not responded, or due to a withdrawal of the complaint); and

— between 2011 and 2015, only three individual complaint cases had been brought to the Commission.

Commission monitoring of state aid to ports is limited to aid schemes

90

The Commission undertook very few desk-based investigations of public funding of port infrastructure.[56] Moreover, in accordance with the legal provisions, the Commission's annual state aid monitoring exercise only partially covers ports since it is limited to aid schemes rather than individual aid notifications[57].

56 These investigations concerned the assessment of the annual investments made using public funds in the accounts of two German ports, Hamburg and Bremen, and one case in Belgium.

57 Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015).

91

Given the significant number of key ports (329) and the large amount of public funding invested in these ports, we consider the current number of aid notifications to be unrealistically low. We also noted the absence of such aid notifications during several of our financial and compliance audits of ERDF/CF-funded projects in ports. For example, our 2012 Annual Report identified a lack of notifications in relation to ERDF support for the construction of facilities in the ports of Patras (Greece) and Rostock (Germany)[58].

Need for additional Commission guidance

92

During the audit, a number of stakeholders (i.e. port authorities, port operators, ship owners and logistics companies) indicated that Commission guidelines on state aid to ports were needed in order to clarify which investments came under the definition of state aid, and which investments needed to be reported. However, despite having already been announced several times by the Commission, there are currently no state aid guidelines for investments in the seaports sector[59]. The Commission has included the task of issuing such guidelines in its actions for 2014-2019[60].

Commission's monitoring of Member States' customs control practices does not cover key information

Member States' customs control practices in ports are a major aspect of a port's attractiveness

93

We also assessed whether differences in the organisation, quality and speed of customs control resulted in some ports being more 'attractive' than others for global shipping lines. We noted that the EU's customs legislation provides for the possibility of local clearance procedures and simplifications for processing goods upon arrival and before admission for free circulation, for example:

— carrying out a risk analysis before the arrival of goods (or before their loading), primarily for security and safety risks, based on the entry summary declaration. This should be complemented, for the same consignments, by another layer of risk analysis, primarily for financial risks, based on the customs declarations;

— collecting information on additional requirements related to the goods in advance (e.g. certificates); and

58 ECA, Annual Report concerning the financial year 2012, box 5.4 (OJ C 331, 14.11.2013).

59 Not to be confused with maritime state aid guidelines, which deal with tonnage tax systems and seafarer-related measures. *Source:* C(2004) 43 — Community guidelines on State aid to maritime transport (OJ C 13, 17.1.2004, p. 3).

60 European Commission: Chapter 2: Single European transport Area — point 2.5 Internal market, Seaports, paragraph 3.3.

— speeding up the release of the cargo after arrival and the final confirmation that the goods match the declaration lodged before arriving.

94

All customs controls are based on Article 13 of the Customs Code, which provides that each Member State may carry out all checks they deem necessary. Customs inspections are based on risk analysis. The customs authority can decide to use simplified procedures, under certain conditions and after assessing the operator's reliability. In 2014, the EU adopted a common risk management system for customs[61], but the Commission has not yet put in place a risk management system for Member State customs authorities: a detailed roadmap should lead to implementation by 2020.

95

Each customs authority had its own arrangements. Moreover, there were different ways of simplifying procedures and differences in the speed, quality and impact of customs control procedures. This made some ports more attractive than others for global shipping lines. For example, several Member States such as Belgium, Denmark, the Netherlands the UK, Finland or Sweden were systematically waiving the obligation to notify customs authorities of the arrival of the goods, or of the intention to release them. However, this should be done only on a case-by-case basis, after a thorough risk analysis. Doing so means that customs authorities cannot carry out risk-based checks[62].

96

In a previous audit, we also found evidence of differences in customs control practices, resulting in goods being delivered to their final destination via an unusual route: goods were being unloaded in Hamburg (Germany) and transported to Rotterdam (the Netherlands), where they were cleared for free circulation and transported to their final destination in Poland[63]. In other words, the importers were seeking clearance in a Member State other than the one importing the goods, either to reduce the likelihood of being subject to checks or to complicate any potential recovery procedure.

97

The Commission's own resources inspection at the customs office of the port of Rotterdam in 2013 found that checks of the correctness of the EU status were carried out only at random, and that, in some cases, customs supervision was being terminated without verifying all information. Of the 200 bills of lading received daily, only 15 to 20 were subject to normal customs declarations, and in the case of local clearance procedures for warehousing or free circulation, there were no checks, electronic or otherwise, to ensure that the summary declaration for temporary storage was consistent with the subsequent declaration for a customs procedure before terminating customs supervision.

61 COM(2014) 527 final of 21 August 2014 on the EU Strategy and Action Plan for customs risk management: Tackling risks, strengthening supply chain security and facilitating trade.

62 European Commission's thematic report of the inspections carried out in Member States in 2011 on the Local Clearance Procedure.

63 Annual Report concerning the financial year 2013, box 2.1 last case indicated (OJ C 398, 12.11.2014).

98

We also assessed data available within the Commission from own resources inspections on *ex post* clearance checks, and compared data for the Netherlands with data for neighbouring and other countries. This indicated that the number of customs staff involved in *ex post* clearance checks in the Netherlands is significantly lower than in other EU Member States, and their numbers have decreased in recent years (from 164 full-time equivalents (FTE) in 2007 to 141 FTE in 2013). To compare this with the data for some main port countries' customs organisations: Belgium has twice the number of customs staff involved in *ex post* clearance (292 FTE); Germany has 50 times as many customs officers conducting *ex post* clearance checks (7 222 FTE); the UK has 1 033 customs staff conducting *ex post* checks, Poland has 794, France 491 and Spain 413[64].

Weaknesses in Commission's monitoring of Member States' customs control practices

99

While the Customs Code provides a framework for all authorities to decide whether or not to simplify their practices, customs procedures in the EU must be uniformly implemented. In other words, the lack of a single EU customs authority should not result in economic operators being treated differently. Although there is a high risk of distortion, there is no system in place for monitoring possible differences. For example, our audit showed that:

— Member States are not required to provide information on the number of specific customs checks to the Commission at individual core port level. Such information is however essential in order to identify differences in how customs authorities treat economic operators;

— a 'Customs 2013' programme had been launched, which included action to harmonise or streamline customs control practices. The Commission's *ex post* evaluation[65] indicated that, although progress had been made towards realising the key programme objective of having all customs authorities act in unison, there remained considerable diversity in the execution of import processes in the EU, while each Member State still had its own automated import system;

— there are good practices regarding the assessment of controls which could be shared: for example, the port authority of Santa Cruz de Tenerife built within its port zone a dedicated building to regroup all inspection bodies (customs, phytosanitary, veterinary and health border inspection control bodies). This means that only one single integrated inspection is done, which makes it possible to measure the time needed for the inspection, and improves the quality and speed of inspections over time.

64 Analysis of the Commission's own resources inspections pursuant to Article 18 of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources (OJ L 130, 31.5.2000, p. 1) and Council Regulation (EC, Euratom) No 1026/1999 of 10 May 1999 determining the powers and obligations of agents authorised by the Commission to carry out controls and inspections of the Communities' own resources (OJ L 126, 20.5.1999, p. 1), and of the Member States' activity reports on traditional own resources (2013).

65 Final evaluation of the Customs 2013 Programme — Final Report (see http://ec.europa.eu/taxation_customs/resources/documents/common/publications/studies/customs_2013_final_evaluation_report.pdf).

Blue Belt, or how maritime transport is at a disadvantage against road transport

100

Under the current conditions, road transport is still the dominant way to send freight from one point to another in the EU, as it has the advantages of flexibility, low cost and smooth, quick door-to-door delivery. Intra-EU maritime transport will only become competitive if it is made quicker and more reliable. One of the main problems facing maritime transport is the fact that the internal market is still not fully realised in the maritime sector. Vessels leaving the territorial waters of a Member State (12-nautical-mile zone) are considered to be outside the EU customs territory and have to go through customs formalities upon arriving in the next EU port, even if they only carry EU goods and have not called at a third country port. By comparison, a truck driving from Tallinn (Estonia) to Lisbon (Portugal) can cross the EU without fulfilling any additional formalities at intra-EU borders.

101

The lack of a level playing field between maritime transport and other transport modes has been apparent since the opening of the internal borders in 1992. In 1995, the Commission indicated[66] that not all transport modes were treated equally and that maritime transport was disadvantaged. Despite the importance of this issue, progress has been particularly slow:

— Based on a 'Blue Belt' action plan aimed at creating a 'European maritime space without barriers' for shipping, a new scheme entered into force in March 2014, facilitating intra-Union shipping through quicker registration and the possibility of waiving customs checks[67] for 'regular shipping services' (RSS) which have to be pre-authorised by the customs authorities. However, only 10 to 15 % of vessels can use the RSS, and all others must still undergo full customs formalities;

— Directive 2010/65/EU on maritime transport reporting formalities (an 'e-Maritime initiative') promoting the use of information technologies in the maritime transport sector was adopted to simplify and harmonise the administrative procedures applied to maritime transport. Work to simplify the electronic reporting of goods on board vessels is ongoing, but this work relates only to creating a 'national single window' for reporting. This means that all Member States will keep their national systems for reporting, while a single EU window for reporting formalities is yet to be put in place. In parallel, electronic customs systems are being developed during a transitional period lasting until 2020, in order to gradually adapt to the new modernised Union Customs Code requirements. This means that almost three decades after the problem first became apparent, the issue will still not have been resolved.

66 COM(95) 317 final of 5 July 1995 'The Development of Short Sea Shipping in Europe: Prospects and Challenges'.

67 This entails shortening the consultation period between Member States from 45 days at present to 15 days, and making it possible to extend the scheme to future port calls in a quicker and more straightforward manner.

Conclusions and recommendations

102

Our audit of the Commission’s and Member States’ strategies on EU maritime freight transport and of the value for money delivered by EU-funded investments in ports, in which we examined 37 new projects and five reassessed projects, points to significant problems. Overall, we found that:

— The long-term port development strategies put in place by the Member States and the Commission did not provide a robust and coherent basis for planning the capacity needed in EU ports and for identifying the EU and national public funding required for port infrastructures;

— Funding in similar port infrastructures and superstructures in neighbouring ports has led to ineffective and unsustainable investments: based on the 30 of 37 projects examined and already completed between 2000 and 2013, one in every three euros (corresponding to 194 million euros for 12 projects) has been spent ineffectively so far. Around half of this funding (97 million euros of EU funding for nine projects) was invested in infrastructures which were not used or were heavily underused for more than 3 years after the works ended. This highlights shortcomings in the *ex ante* needs assessment and indicates a high risk of the amounts invested being wasted;

— This observation also applies to the five reassessed ports already examined in 2010. This reassessment did indicate poor value for money overall: the use of the EU-funded capacity for these ports was still inadequate after almost a decade of operations. The port areas in four ports were still at a very low level or empty. Overall, 292 million euros of the investments was considered to have been spent ineffectively;

— Cost overruns and delays are further illustrations of inefficiencies in the examined investments in port infrastructures. Overall, the EU-funded projects examined had cost overruns of 139 million euros. Moreover, 19 of the 30 completed projects faced delays, out of which 12 were delayed by more than 20 % of the planned project duration. Relative to the initially planned duration, the delays were of up to 136 %. Of the seven projects (corresponding to 524 million euros of EU funding) not yet completed at the time of the audit, six were also delayed;

— Many missing and inadequate links to hinterlands, such as missing road and rail connections, will need further public funding to make the initial port investments work properly;

— Both the internal coordination within the Commission and the procedure in place between the EIB and the Commission to assess proposed EIB loans for port infrastructures have not been functioning properly as the EIB does not share all relevant information with the Commission. Moreover, for some loan proposals, critical problems were highlighted internally within the Commission services, but not signalled to the EIB in the form of a negative opinion by the Commission; and

— The Commission did not take the necessary actions in the area of state aid and customs procedures to enable ports to compete on a level playing field. The Commission's state aid control could have been more proactive and more effective by monitoring *ex post* whether the conditions under which earlier decisions (e.g. for concessions) were taken, remained unchanged or by refusing support to user-specific superstructures.

For example, projects which included superstructures used by private operators had been co-financed with around 92.5 million euros from the EU budget.

Long-term port development strategies at Member State and Commission level should focus on creating the necessary links to the network

103
All five Member States visited (Germany, Spain, Italy, Poland, Sweden) had put in place long-term port development strategies by 2015, due in part to the introduction of an *ex ante* conditionality for EU funding. Weaknesses were found in how collaboration between ports was explored, in terms of synergies between ports and the potential for specialisation, and in how these strategies were translated into timely and well-coordinated port investment.

104
At EU level, the Commission's strategy on ports has developed over time, but robust information on capacity planning is still lacking. Moreover, there are too many 'core ports' (104 in total, to which the majority of the EU funding is to be allocated). This prevents EU funding from targeting the most important ports. On the other hand, some important waterways in need of funding are not included in the Commission's strategy.

105
Moreover, the Commission has little information about the actual situation of these core ports: in particular, the Commission does not receive data on their available capacity, the capacity they are actually using or their future capacity needs, nor on the Member States' public investments in these ports. In the absence of such monitoring information, there is no EU-wide overview to provide the basis for better coordination of the core ports' capacity planning. The Commission's lack of robust information on available port capacity, together with overestimated future traffic growth has contributed to the overestimation of the additional port capacity needed within the EU, at least for certain regions (see paragraphs 31 to 49).

Recommendation 1

We recommend that the Commission should:

(a) put in place a monitoring of core port capacity, taking account of the Member States' plans for implementing their long-term strategies;

Target implementation date: by the end of 2017.

(b) revise the current number of 104 'core ports' which are necessary to maintain an adequate level of accessibility for the EU as a whole;

Target implementation date: by 2023.

(c) set out an EU-wide port development plan for core ports and maritime waterways and canals;

Target implementation date: by 2020.

EU-funded investments in port infrastructures should become more effective and efficient

106

Investments in port infrastructures need some time to show results and, by their very nature, port projects are about building capacity for the long-term future. The timeliness of investments is often crucial to their effectiveness, particularly in a very competitive environment such as maritime transport. Many projects examined were unused (empty) or heavily underused at the time of the audit. Based on the examined and already completed 30 projects between 2000 and 2013, one in every three euros (corresponding to 194 million euros for 12 projects) has been spent ineffectively so far. Around half of this funding (97 million euros of EU funding for nine projects) was invested in infrastructures which were not used or were heavily underused for more than 3 years after the works ended. This highlights shortcomings in the *ex ante* needs assessment and indicates high risk of the amounts invested being wasted.

107
As in our previous special report on seaports, we found a significant number of projects being delayed, due in part to cumbersome administrative procedures. The average delay was almost 13 months, with delays varying between 3 months and 33 months. Relative to the initially planned duration, the delays were of up to 136 %. We also observed cost overruns of 139 million euros, or 8.7 million euros on average (without the projects that had not yet been completed). In addition, there were many missing and inadequate links to hinterlands (i.e. roads and railways) which will need further public funding to make the initial port investments work properly.

108
The reassessment of the five projects examined in 2010 indicated poor value for money overall: the use of the EU-funded capacity for these ports was still inadequate after almost a decade of operations. The port areas in four ports were still at a very low level or empty, while another one did not have any operations. Overall, 292 million euros of the investments (around 89 % of 329 million euros in total) was considered to have been spent ineffectively.

109
Many port authorities across Europe invested simultaneously (and plan to further invest) in similar port infrastructure and superstructures to improve their competitive situation. This entails significant risks to the projects' effectiveness and sustainability.

110
Both the internal coordination within the Commission and the procedure in place between the EIB and the Commission to assess proposed EIB loans for port infrastructure have not been functioning properly as the EIB does not share all relevant information with the Commission. Moreover, for some loan proposals, critical problems were highlighted internally within the Commission, but not signalled to the EIB in the form of a negative opinion by the Commission (see paragraphs 50 to 81).

Recommendation 2

We recommend that the Commission should:

(a) work with the Member States to reduce administrative burden and delays in project selection and implementation by promoting the principle of a national 'one-stop-shop' for the issuing, or refusal, of all permits and authorisations for port infrastructure-related investments. Moreover, a 'tacit agreement' principle (e.g. of 2 years) should be implemented as soon as possible;

Target implementation date: by the end of 2017.

(b) strictly apply the ESIF Common Provisions Regulation and the CEF Regulation on financial corrections due to underperforming investments for the 2014-2020 period;

Target implementation date: immediately.

(c) assess the possibility of excluding EU funding for port infrastructure for container transhipment and storage (e.g. construction of quays, docks and storage capacities) during the 2014-2020 period. In addition, superstructures which are not within the public remit should be excluded from EU funding, as these should be considered a commercial environment;

Target implementation date: by the end of 2018.

Recommendation 3

We recommend that the Commission and the Member States should:

(a) prioritise EU co-financing from both CEF and ESIF spending to core ports to improve their connections to their hinterlands;

Target implementation date: by the end of 2016.

(b) fund port infrastructures other than connections to hinterlands only on the condition that there is a clearly established need, where EU added value is demonstrated and where there is a sufficiently large private investment component secured in the overall investment envelope;

Target implementation date: by the end of 2016.

Recommendation 4

We recommend that the Commission should:

(a) ensure that all necessary loan information on proposed EIB loans is shared between the EIB and the Commission to facilitate robust assessments;

Target implementation date: by the end of 2017.

(b) internally clarify, and consistently implement, the procedure for determining whether critical remarks should lead to a negative opinion on a proposed EIB loan;

Target implementation date: by the end of 2016.

State aid rules and customs controls: more needs to be done to ensure a level playing field

111
Different interpretation of state aid rules in the port sector, and differences in how the Union's customs procedures are applied can contribute to a market distortion and undermine fair competition between ports. In both areas, the Commission has not yet taken sufficient action to create a level playing field between ports.

112
The Commission has examined potential state aid to ports only sporadically since 2010, despite significant public spending by Member States on port infrastructure. Moreover, seaport-specific state aid guidelines have not been presented yet despite being promised years ago.

113
Our audit indicated that differences in customs controls can affect a port's competitiveness, and that the Commission's monitoring of customs control practices between ports in the different Member States is inadequate for the purpose of detecting practices which may create unfair competitive advantages.

114

Moreover, customs rules penalise intra-EU maritime transport, as vessels leaving the territorial waters of a Member State have to go through customs formalities upon arrival in the next EU port, even if they are only carrying EU goods and have not called at a third-country port (see paragraphs 82 to 101).

Recommendation 5

We recommend that the Commission should:

(a) issue state aid guidelines for seaports;

Target implementation date: by the end of 2017.

(b) ensure consistency in the treatment of user-specific port superstructures;

Target implementation date: by the end of 2017.

(c) increase the number of desk-based state aid investigations on ports and its follow-up of earlier state aid decisions to ensure that the conditions present at the outset remain;

Target implementation date: by the end of 2017.

Recommendation 6

We recommend that Member States should systematically notify the Commission of all public financial support to ports in accordance with EU state aid rules;

Target implementation date: by the end of 2017.

Recommendation 7

We recommend that the Commission should:

(a) ask Member States to periodically provide specific information on the type and number of specific customs procedures at individual core ports in order to assess whether ports are being treated equally;

Target implementation date: by the end of 2017.

(b) improve the competitive position of maritime transport compared to other transport modes by further simplifying maritime transport and custom formalities, in particular by moving towards an EU maritime 'single window';

Target implementation date: by end of 2017.

This report was adopted by Chamber II, headed by Mr Henri GRETHEN, Member of the Court of Auditors, in Luxembourg at its meeting of 20 July 2016.

For the Court of Auditors

Vítor Manuel da SILVA CALDEIRA
President

Annex I

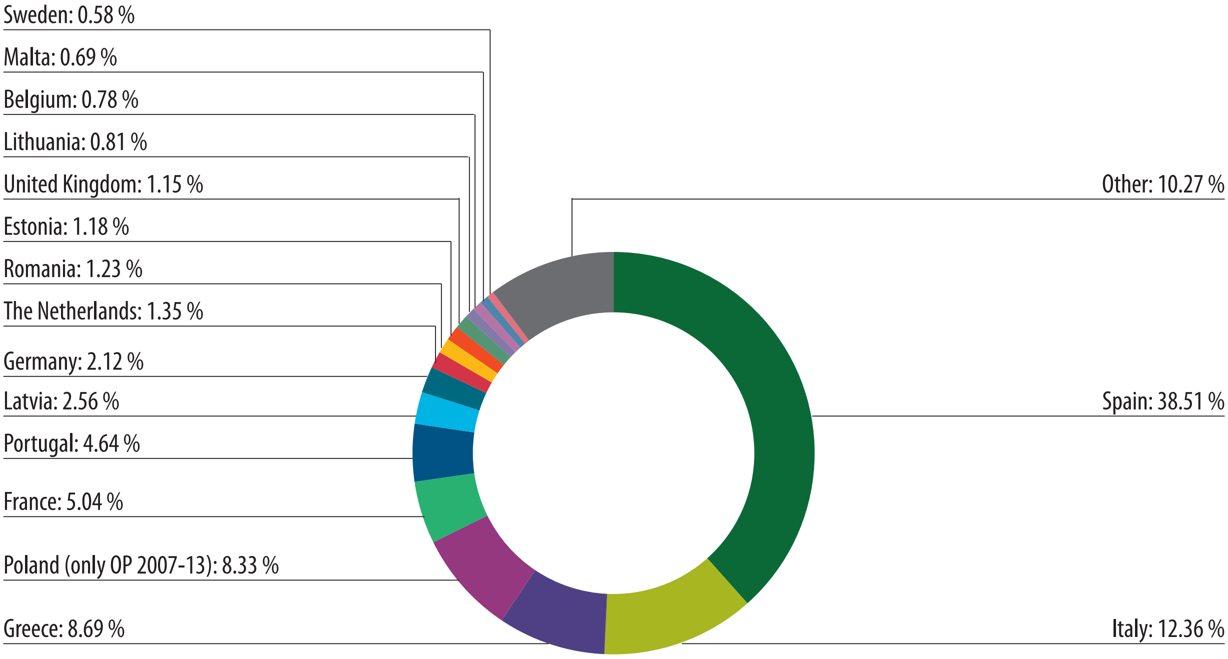
Spending of EU funds for maritime transport projects 2000-2013 period

Spain	2 610 322 428	38.51 %
Italy	837 719 751	12.36 %
Greece	588 742 943	8.69 %
Poland[1]	564 232 876	8.33 %
France	341 726 711	5.04 %
Portugal	314 324 344	4.64 %
Latvia	173 729 139	2.56 %
Germany	143 786 488	2.12 %
The Netherlands	91 333 779	1.35 %
Romania	83 148 025	1.23 %
Estonia	80 303 497	1.18 %
United Kingdom	78 033 155	1.15 %
Lithuania	54 675 005	0.81 %
Belgium	52 685 257	0.78 %
Malta	46 945 423	0.69 %
Sweden	38 982 443	0.58 %
Austria[2]	26 910 589	0.40 %
Cyprus	22 085 473	0.33 %
Slovenia	13 330 356	0.20 %
Hungary[2]	12 275 556	0.18 %
Finland	6 515 269	0.10 %
Czech Republic[2]	4 203 737	0.06 %
Ireland	1 842 000	0.03 %
Bulgaria	1 200 000	0.02 %
Cross-border projects	109 561 318	1.62 %
Interreg	24 290 310	0.36 %
Other EU projects	454 519 870	6.71 %
Total	**6 777 425 742**	**100.00 %**

1 Refers only to Programming Period 2007-2013.

2 While these countries do not have seaports, they reported ERDF/CF infrastructure expenditure for ports, probably by mistake.

Annex I


Sweden: 0.58 %
Malta: 0.69 %
Belgium: 0.78 %
Lithuania: 0.81 %
United Kingdom: 1.15 %
Estonia: 1.18 %
Romania: 1.23 %
The Netherlands: 1.35 %
Germany: 2.12 %
Latvia: 2.56 %
Portugal: 4.64 %
France: 5.04 %
Poland (only OP 2007-13): 8.33 %
Greece: 8.69 %
Other: 10.27 %
Spain: 38.51 %
Italy: 12.36 %

Annex II

Overview of projects examined per Member State

No of projects	Member State	Port	Project examined	Project costs in euros	EU-funding in euros	Project contents	Capacity	Connection	Others	Uncompleted output[1]	Output completed and used as planned[1]	Output completed and unused or heavily underused	% of amount of unused or heavily underused EU funding spent or to be spent[2]
Newly audited projects													
1	Germany	Cuxhaven	Herstellung Offshore Basishafen Cuxhaven Liegeplatz 8	31 945 019	15 942 509	Construction of a new port quay	15 942 509					X	7 971 255
2			Östliche Erweitung Offshore Basis Cuxhaven Liegeplatz 9	41 436 573	18 800 000	Construction of a new port quay	18 800 000					X	18 800 000
3			Offshore Basis Cuxhaven Errichtung der Hafensohle Liegeplatz 8	3 400 649	1 250 000	Construction of a port quay bottom accomodation for 'jack-up'-vessels		1 250 000				X	1 250 000
4		Wilhelms-haven	Sanierung 'Alter Vorhafen' Wilhelmshaven	2 175 813	761 534	Rehabilitation of a quay-wall			761 534			X	761 354
5			Ertüchtigung der Niedersachsenbrücke	16 456 421	6 704 346	Construction to increase port capacity	6 704 346				X		
6			Großprojekt 'Jade-Weser-Port'	146 856 096	32 930 149	Construction of a new port area and container terminal	32 930 149					X	26 344 119
7		Hafen Brake	Norderweiterung Hafen Brake - Sandaufspülung und Errichtung Kaianlage	24 600 000	8 610 000	Extension of port area and construction of a new quay.	8 610 000				X		
8			Norderweiterung Hafen Brake - 2. Ausbaustufe)	14 803 596	5 924 021	Extension of port area and construction of a new quay.	5 924 021				X		

1 Finding at the time of the audit visit.
2 Only for the completed projects.

Annex II

No of projects	Member State	Port	Project examined	Project costs in euros	EU-funding in euros	Project contents	Capacity	Connection	Others	Uncompleted output[1]	Output completed and used as planned[1]	Output completed and unused or heavily underused	% of amount of unused or heavily underused EU funding spent or to be spent[2]
9	Italy	Salerno	Logistica e porti. Sistema integrato portuale Salerno	73 000 000	53 262 297	1) Expanding port entrance (imboccatura) 2) Stabilising the dock 3) Dredging	26 631 149	26 631 149		X			
10			Collegamenti ferroviari e stradali. Sistema dei trasporti Salerno Porta Ovest. 1st lot	146 600 000	115 245 000	Road and rail connections to the port		115 245 000		X			
11			Collegamenti ferroviari e stradali. Sistema dei trasporti Salerno Porta Ovest. 2nd lot			Road and rail connections to the port				X			
12		Taranto	Collegamento ferroviario del complesso del porto di Taranto con la rete nazionale	25 500 000	1 875 000	Rail connection to the port		1 875 000		X			
13			Dragaggio e cassa di colmata	83 000 000	15 000 000	Dredging and deepening the sea bed		15 000 000		X			
14			Terminal area container porto di Taranto (2000-2006)	41 100 000	11 250 000	Expanding an existing terminal	11 250 000						11 250 000

1 Finding at the time of the audit visit.
2 Only for the completed projects.

Annex II

No of projects	Member State	Port	Project examined	Project costs in euros	EU-funding in euros	Project contents	Capacity	Connection	Others	Uncompleted output[1]	Output completed and used as planned[1]	Output completed and unused or heavily underused	% of amount of unused or heavily underused EU funding spent or to be spent[2]
15	Poland	Gdańsk	Połączenie Portu Lotniczego z Portem Morskim Gdańsk - Trasa Słowackiego	337 572 017	273 634 889	Construction of a 10.4 km long road		273 634 889		X			
16	Poland	Gdańsk	Modernizacja wejścia do portu wewnętrznego (w Gdańsku). Etap I - przebudowa falochronu wschodniego	12 550 797	10 644 987	Upgrade of an existing breakwater, widening and dredging of the entry fairway	5 322 493.50	5 322 493.50			X		
17	Poland	Gdańsk	Modernizacja wejścia do portu wewnętrznego (w Gdańsku). Etap II - przebudowa szlaku wodnego na Motławie	6 705 529	5 676 090	Reconstruction of a tourist quay (city centre)			5 676 090		X		
18	Poland	Gdynia	Rozbudowa infrastruktury portowej do obsługi statków ro-ro z dostępem drogowym i kolejowym w Porcie Gdynia	29 070 083	10 968 299	Upgrade of an infrastructure needed to extend the capacity forhandling ro-ro vessels: ramp, road and rail access		10 968 299				X	5 484 149
19	Poland	Gdynia	Przebudowa Kanału Portowego w Porcie Gdynia	22 129 659	14 691 975	Upgrade of the Port Channel via dredging		14 691 975			X		
20	Poland	Gdynia	Infrastruktura dostępu drogowego i kolejowego do wschodniej części Portu Gdynia	27 474 031	17 731 050	Reconstruction/ construction of 2.12 km of roads and 2.85 km of rails		17 731 050				X	17 731 050

1 Finding at the time of the audit visit.
2 Only for the completed projects.

Annex II

No of projects	Member State	Port	Project examined	Project costs in euros	EU-funding in euros	Project contents	Capacity	Connection	Others	Uncompleted output[1]	Output completed and used as planned[1]	Output completed and unused or heavily underused	% of amount of unused or heavily underused EU funding spent or to be spent[2]
21	Poland	Szczecin - Świnoujście	Modernizacja toru wodnego Świnoujście - Szczecin (Kanał Piastowski i Mieliński) - etap II, strona wschodnia i zachodnia	77 825 375	65 264 553	Reconstruction of the fairway between the two ports		65 264 553		X			
22	Poland	Szczecin - Świnoujście	Modernizacja dostępu drogowego do Portu w Szczecinie	28 534 045	23 002 547	Reconstruction of a section of a Street to connect the port		23 002 547			X		
23	Poland	Szczecin - Świnoujście	Przebudowa falochronu wschodniego w Świnoujściu	10 318 058	8 422 871	Reconstruction of 1.47km of breakwater		8 422 871			X		
24	Sweden	Norrköping	2008-SE-92606-P (Norrköping intermodal infrastructure package improvement of access fairway)	35 300 000	3 528 000	Widening and deepening of the access fairway		3 528 000			X		
25	Sweden	Karlskrona	2009-EU-21010-P' (Motorways of the Seas-project: Baltic Link Gdynia-Karlskrona	85 400 000	17 090 800	Infrastructure works to connect the two ports to create a seamless intermodal rail and sea transport chain		17 090 800				X	17 090 800

1 Finding at the time of the audit visit.
2 Only for the completed projects.

Annex II

No of projects	Member State	Port	Project examined	Project costs in euros	EU-funding in euros	Project contents	Capacity	Connection	Others	Uncompleted output[1]	Output completed and used as planned[1]	Output completed and unused or heavily underused	% of amount of unused or heavily underused EU funding spent or to be spent[2]
26	Spain	Cartagena	Ampliación Dársena de Escombreras. Fase 1	116 492 375	46 035 682	Construction of a new breakwater and a new basin	46 035 682				X		
27			Terminal Polivalente de Graneles	34 454 637	19 275 477	Construction of a 575 metre long dock and an adjacent area of 4.5 ha	19 275 477				X		
28			Relleno y Urbanizacion Terminal Polivalente	28 314 601	10 440 783	Land filling of a storage area of approximately 20 ha	10 440 783					X	10 440 783
29		Algeciras	Infraestructuras Portuarias Y Auxiliares En Isla Verde (3ª Fase) En Algeciras	511 460 000	127 314 481	Creation of 125 ha of new land areas reclaimed from the sea	127 314 481					X	73 842 399
30			Muelle Y Explanada Exterior Al Dique, Junto A Isla Verde	168 576 557	52 199 106	Construction of a new dock.	52 199 106				X		
31			Terminal Pública de Contenedores TTI Algeciras	168 950 665	22 226 148	Acquisition of superstructures for a container terminal			22 226 148		X		
32		Vigo	Mejora De La Operatividad De Los Muelles Comerciales (1ª Fase)	48 249 668	27 973 501	Enlarging the existing docks to the east and to the north	27 973 501				X		
33			Almacenamiento De Coches En Altura En La Terminal De Transbordadores	20 054 823	15 143 049	Construction of a silo for the storage of vehicles at the RO-RO terminal.	15 143 049				X		
34			Ampliación Del Puesto De Inspección Fronteriza Arenal	2 188 957	750 884	Construction of a new building for the sanitary inspection of goods			750 884		X		

1 Finding at the time of the audit visit.
2 Only for the completed projects.

Annex II

No of projects	Member State	Port	Project examined	Project costs in euros	EU-funding in euros	Project contents	Capacity	Connection	Others	Uncompleted output[1]	Output completed and used as planned[1]	Output completed and unused or heavily underused	% of amount of unused or heavily underused EU funding spent or to be spent[2]
35	Spain	SC Tenerife	Nva. Base de Contenedores en la Dársena del Este del Pto. SC. Tenerife	17 770 802	7 860 602	Construction to increase the capacity of the container terminals and improving the operability.	7 860 602				X		
36			Nueva Base De Contenedores En La Dársena Del Este, 2ª Fase	15 605 808	6 387 113	Construction to increase the capacity of the container terminals and improving the operability.	6 387 113				X		
37			Tramo 1º Fase2ª Def. rellenos D. Este: quiebro 1º y 2ª alineación Espigón Cueva Bermeja	5 673 967	2 809 113	Construction of new land area adjacent to the existing breakwater, to support operations on the dock for liquid and dry bulk.	2 809 113					X	2 809 113
			sum 1 (excluding re-audit projects)	2 461 546 621	1 076 626 856	Total of the newly audited projects per category:	447 553 574	599 658 626	29 414 656	7	18	12	193 775 022
						Grand total of the newly audited projects:	1 076 626 856						
						Grand total of the newly audited projects in % of total:	41.57	55.70	2.73				

1 Finding at the time of the audit visit.
2 Only for the completed projects.

Annex II

No of projects	Member State	Port	Project examined	Project costs in euros	EU-funding in euros	Project contents	Capacity	Connection	Others	Uncompleted output[1]	Output completed and used as planned[1]	Output completed and unused or heavily underused	% of amount of unused or heavily underused EU funding spent or to be spent[2]
Re-audited projects													
38	Italy	Augusta	Port of Augusta	15 493 707	3 839 328	Construction of buildings, quays, RO-RO berths, pavements, barriers, external systems for the completion of the commercial port of Augusta.	1 919 664	1 919 664				X	3 839 328
39	Spain	Campamento San Roque	Infrastructuras portuarias en las instalaciones de Campamento, San Roque	37 688 436	16 582 912	Rehabilitation of a quay and the construction of 33.2 ha of terminal space, of which 17.6 ha newly created	16 582 912					X	16 582 912
40	Spain	Punta Langosteira (La Coruña)	Nuevas instalaciones portuarias en Punta Langosteira (La Coruña) - 1a Fase' – Beneficiary: Autoridad Portuaria de A Coruña	590 172 648	257 539 720	Construction of an outside port neighbouring the existing port	257 539 720					X	244 662 734
41	Spain	Ferrol	Ampliación del Puerto de Ferrol (puerto exterior)' - Beneficiary: Autoridad Portuaria de Ferrol – San Cibrao ('re-audit')	110 860 209	39 065 500	Construction of an outer port complementing the existing port	39 065 500					X	35 158 950
42	Spain	Arinaga - Las Palmas	Puerto de Arinaga – Muelle de Agüimes 1ª fase A' Beneficiary: Autoridad Portuaria de Las Palmas	23 480 152	11 750 152	Construction of a new port to decongest Las Palmas	11 750 152					X	10 692 638

1 Finding at the time of the audit visit.
2 Only for the completed projects.

Annex II

No of projects	Member State	Port	Project examined	Project costs in euros	EU-funding in euros	Project contents	Capacity	Connection	Others	Uncompleted output[1]	Output completed and used as planned[1]	Output completed and unused or heavily underused	% of amount of unused or heavily underused EU funding spent or to be spent[2]
			sum 2 (only re-audit-projects)	777 695 152	328 777 612	Total of the re-audited projects per category:	326 857 948	1 919 664		0	0	5	310 936 562
			sum 3 (Re-audit + audited projects)	3 239 241 773	1 405 404 468	Total of all audited projects per category:	774 411 522	601 578 290	29 414 656	7	18	17	
						Grand total of all audited projects:	1 405 404 468						
						Grand total of all audited projects in % of total:	55.10	42.80	2.09				
						Infrastructure related to increasing the potential for transhipment:	943 805 903						

1 Finding at the time of the audit visit.
2 Only for the completed projects.

Annex III

Overview of non-completed projects

Member State	Port concerned	Non-completed project	When was the project expected to end (initial date in the contract)?	How important is the delay compared to the initial set target (in months, as known now)?	EU-amount concerned (euros)
Italy	Salerno	Logistics and ports. Integrated port Salerno	31.12.2015	13 months	53 262 297
		Road and rail connections of the port of Salerno West Gate, 1st lot	30.6.2014	Minimum 36 months	115 245 000
		Road and rail connections of the port of Salerno West Gate, 2nd lot			
	Taranto	Rail connection of the port of Taranto to the national rail network	31.12.2015	Minimum 24 months	1 875 000
		Dredging and reclaiming of land	31.12.2014	Minimum 26 months	15 000 000
Poland	Gdańsk	Połączenie Portu Lotniczego z Portem Morskim Gdańsk - Trasa Słowackiego	30.9.2015	Minimum 16 months	273 634 889
	Szczecin - Świnoujście	Modernisation of the fairway Świnoujście - Szczecin (Kanał Piastowski i Mieliński) - phase II, from east to west	30.9.2015	No delay	65 264 553
				Total minimum delay in months already known at time of the audit: 115	524 281 739

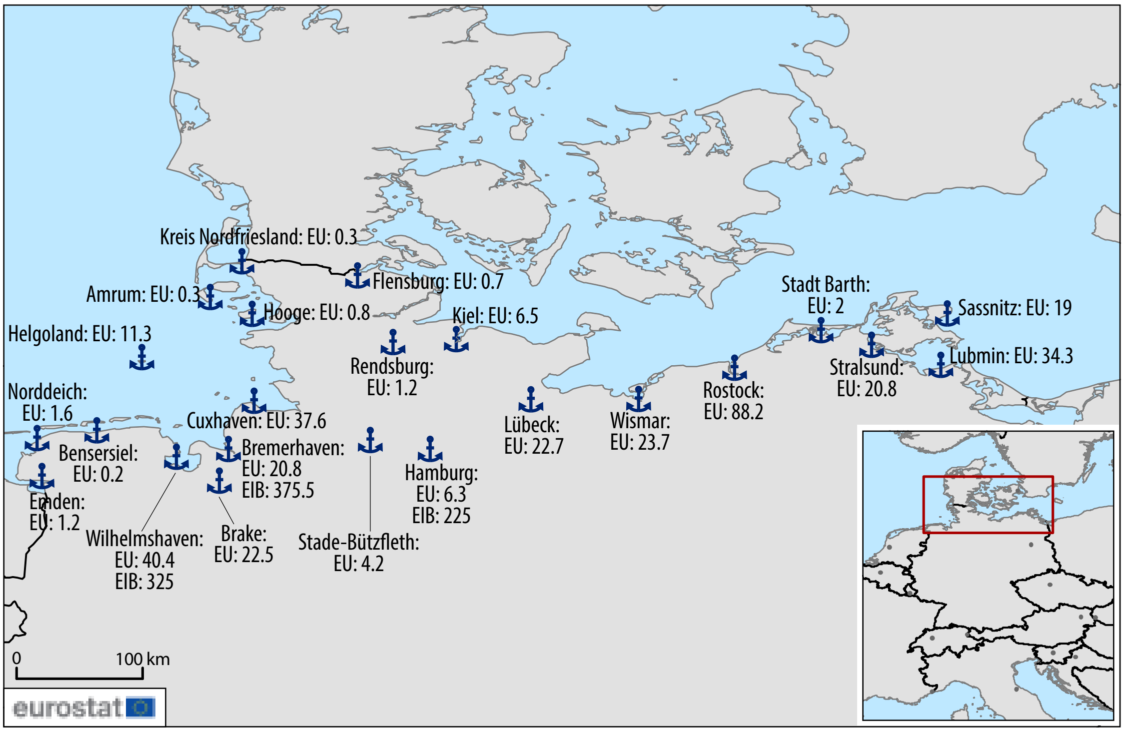
Annex IV

Main characteristics of Member States' port systems, and overview of EU and EIB support for the audited port areas (2000-2013 period) [1]

1. Germany

Germany has about 21 seaports and about 250 inland ports. There is a division of responsibilities between Federal Government, the Federal States (Länder) and local authorities and other main port stakeholders (e.g. industry, trade unions) which makes it difficult to identify common goals and strategies. The Federal Government is essentially responsible for establishing the regulatory transport framework plan and providing infrastructure links to and from seaports and inland ports (hinterland-connection), whereas the Federal States (and local authorities) are mainly responsible for the port infrastructure and industry and trade unions ensure port operations. The following main investments (structural funds) have been identified:

million euros



Administrative boundaries: © EuroGeographics © EEA
Cartography: Eurostat - GISCO, 04/2016

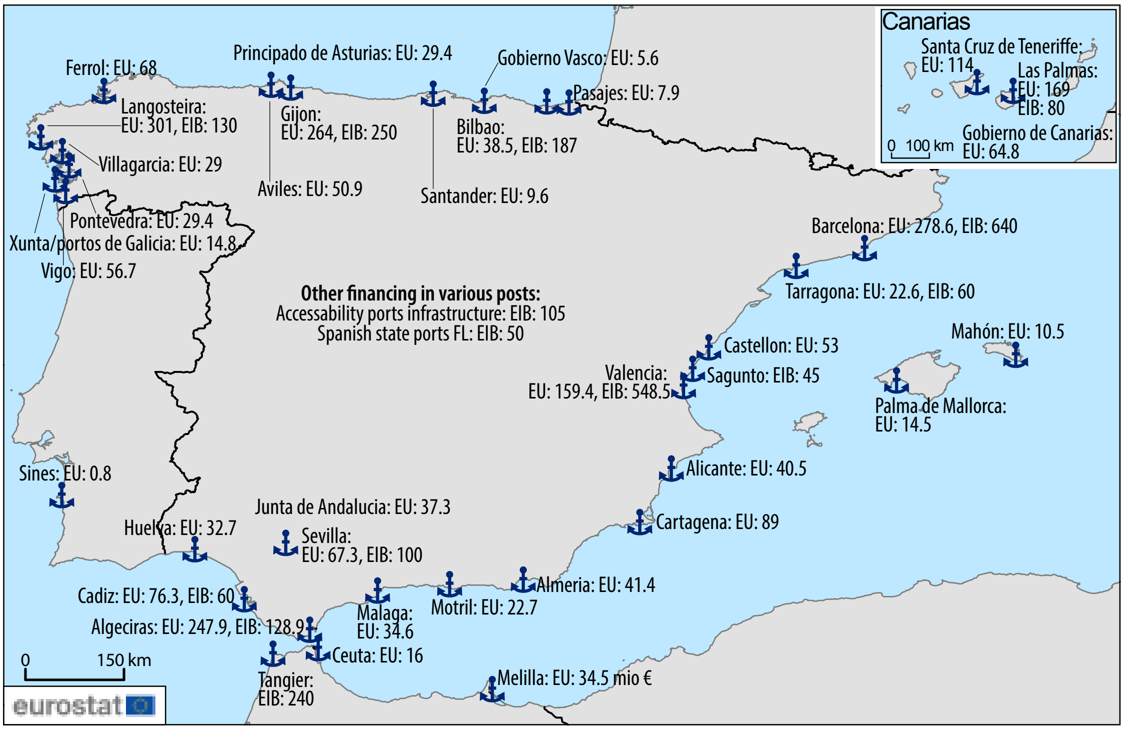
1 *Source:* ECA compilation of Commission data and EIB publicly available data (website).

Annex IV

2. Spain

Spain has one of the longest coastlines in Europe (8 000 km). Its geographical location, being closest to the axis of one of the world's major maritime routes, also strengthens its position as a strategic area in international shipping and a logistics platform in southern Europe. The State-owned Spanish Port System includes 46 ports of general interest, managed by 28 Port Authorities, whose investments; coordination and efficiency are monitored and managed by a government agency Puertos del Estado, a body depending on the Ministry of Public Works which is responsible for implementing the government's port policy. Spain is the country that has invested most of the EU-money in its ports (almost 40 % of the entire EU amount). The following main investments were noted:

million euros



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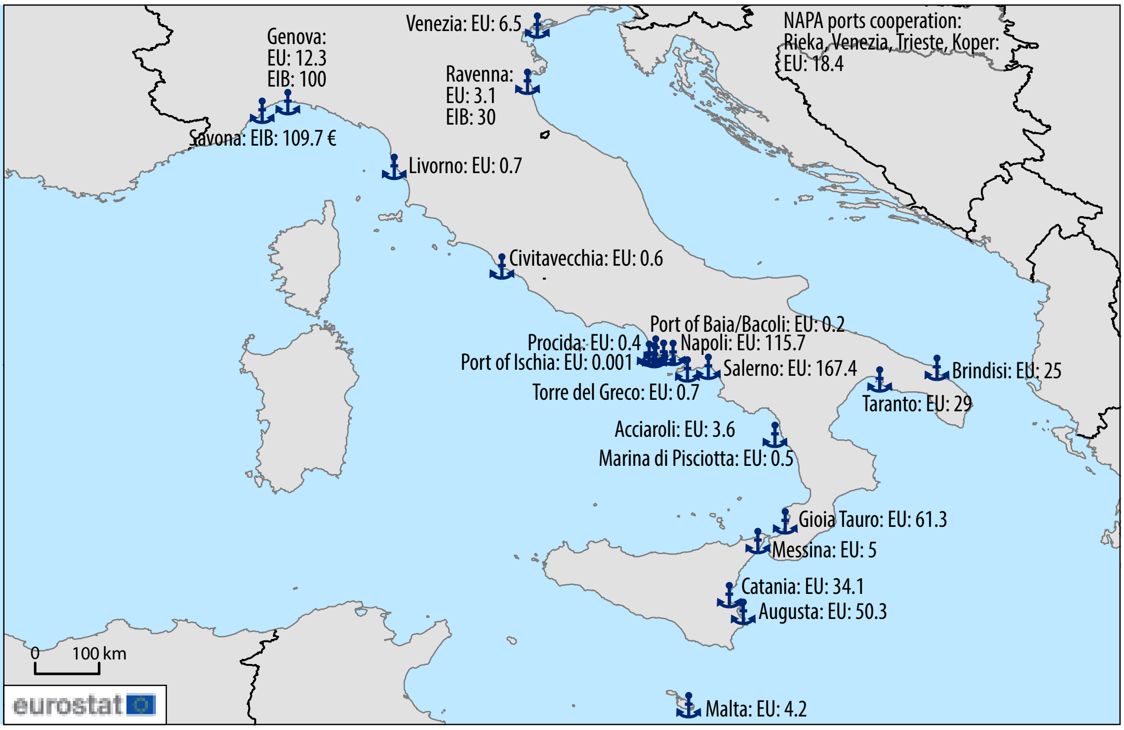
3. Italy

The Italian ports system is fragmented. It consists of a multitude of small ports characterised by scale inefficiency and limited market power vis-à-vis global terminal operators. The Italian government has recently adopted a new law for port reform, amongst others, to merge ports located close to each other and their port authorities to rationalise the ports system, improve coordination, attract additional cargo and investments, and provide more financial autonomy. Investments in the Southern part of the country were mainly from the cohesion policy funds, whereas the northern part was focusing on both EIB and TEN-T money. The following investments were noted.

million euros



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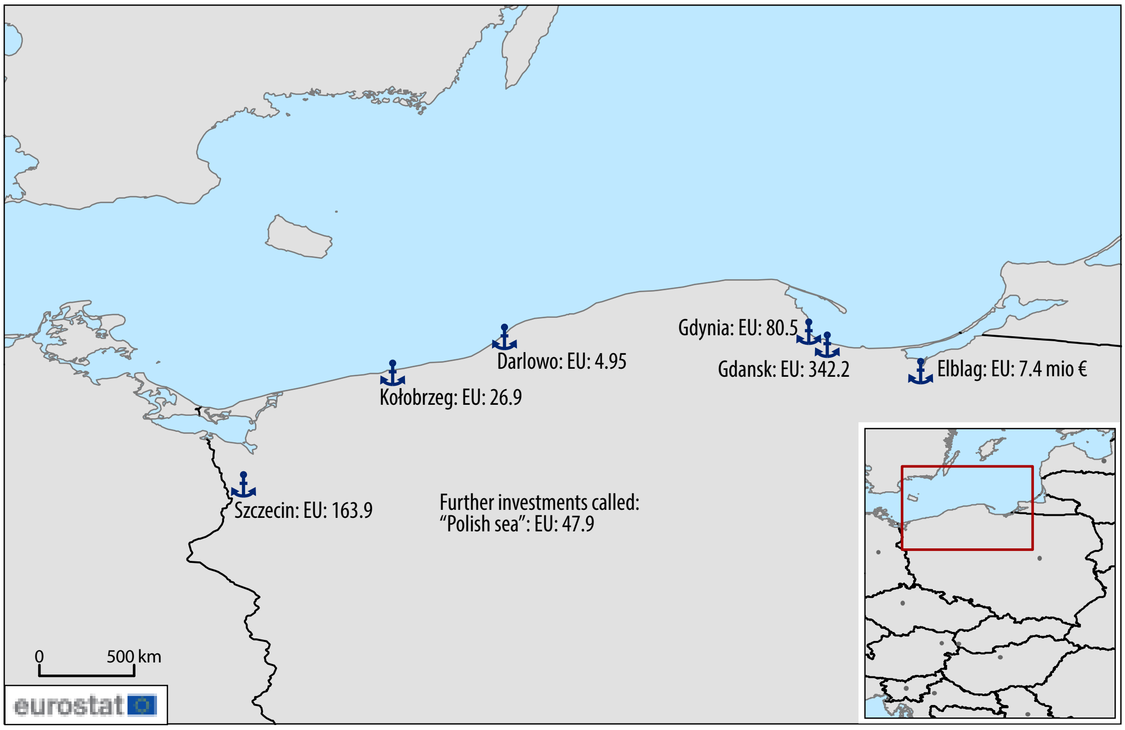
Annex IV

4. Poland

The 2007 'National Strategy on development of Polish ports by 2015' had the objectives of improving the competitiveness of Polish ports, increasing their contribution to the socioeconomic development of the country and strengthening their significance within the international transport network. Three ports were considered key for the functioning of the national economy: Gdańsk, Gdynia and Szczecin-Świnoujście. The bulk of the public investments therefore are concentrated on these three ports, and their connections to the international corridors, as follows:

million euros



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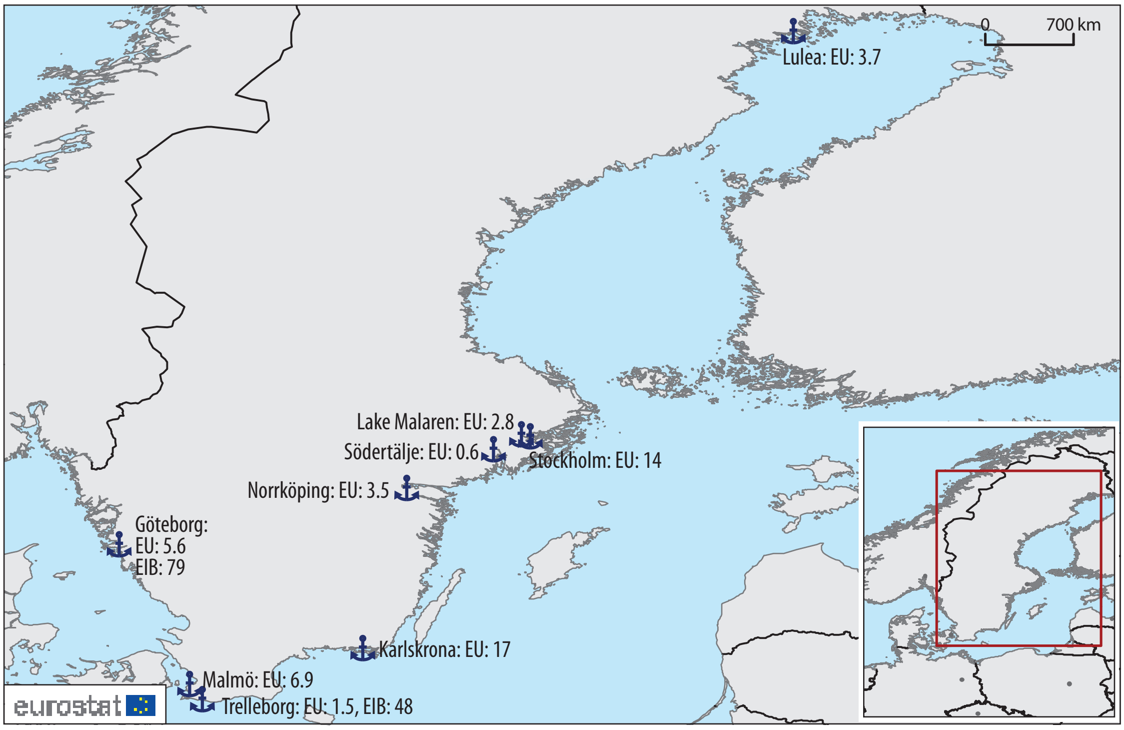
Annex IV

5. Sweden

The Swedish law provides to the central state the management and financial responsibilities for the fairways outside, but leading to, the ports, and for the connections to the hinterland whereas the area within the port zone is the responsibility of the local or regional authority. Since 2010, there is a global national investment plan for infrastructure projects for all transport modes in Sweden. The plan covers the period 2010 to 2021, is updated every 4 years, and includes maritime transport, ports and fairways. For port infrastructure investments the port authorities, belonging to the local communes, decide and the state has no say in this because of the regional and local autonomy; whereas the dues for the fairways, managed by the Swedish Maritime Administration (SMA), are State responsibility. The following main EU and EIB investments were noted since 2000:

million euros



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Overview of user-specific superstructures co-funded with EU funding

Member State	Beneficiary	Project name	Total cost in euros	EU funding in euros	Project scope
Poland	GCT Gdynia	Phase III of building GCT container terminal in Gdynia	50 007 971	15 195 631	Extension of infrastructure (e.g. track bed for gantry cranes, container storage yards and purchase of equipment (e.g. gantry cranes, terminal tractors, container semi-trailers)
	BCT Gdynia	Modernisation of BCT Terminal in Gdynia	49 666 124	13 469 631	Extension/reconstruction of infrastructure (np. road surface of thoroughfares) and purchase of equipment and IT solutions (e.g. machines and equipment used in the process of container handling)
	Gdynia Port Authority	Reconstruction of intermodal rail terminal in the Port of Gdynia	24 108 770	9 773 125	Extension/reconstruction of infrastructure including crane tracks, road system
	DCT Gdańsk	Phase III of DCT Gdańsk	23 942 459	8 339 326	Building infrastructure (e.g. container storage yards, modernisation of track beds for gantry cranes) and purchase of equipment (e.g. gantry cranes, terminal tractors, container semi-trailers)
	DCT Gdańsk	Phase II of DCT Gdańsk	40 845 816	6 710 647	Extension/reconstruction of infrastructure (e.g. railway sliding, container storage yards) and purchase of equipment (e.g. gantry cranes, terminal tractors, container semi-trailers)
	GCT Gdynia	Phase II of building GCT container terminal in Gdynia	45 660 580	5 251 613	Extension/reconstruction of infrastructure (e.g. warehouses, container storage yards, car parks, electrical installation) and purchase of equipment (e.g. gantry cranes, terminal tractors, container semi-trailers)
	DB Szczecin	Container Terminal in the Port of Szczecin — stage I phase I	14 161 270	4 887 595	Building infrastructure of the container terminal and purchase of equipment (e.g. gantry cranes)
	BCT Gdynia	Purchase of quayside crane to increase intermodal volumes at BCT Gdynia terminal	16 275 975	3 969 750	Purchase of equipment (e.g. gantry cranes)
	Gdańsk Port Authority	Expansion of the intermodal container terminal at the Port of Gdańsk's Szczecińskie Quay	6 724 173	2 704 222	Reconstruction of container storage and handling yards, underground utility installations and car parks
Spain	Port of Algeciras	Terminal Publica de Contenedores TTI Algeciras	168 950 665	22 226 148	Purchase of 8 dock ('Ship-to-shore') cranes
		Total EU money for superstructures:		**92 527 688**	

Annex VI

Overview of state aid decisions since 2007

State aid cases in sea ports	Year	Country	Seaport concerned	Type of good covered, infrastructure (I) and/or superstructure (S)	Planned investment costs (in euros)	Aid intensity	Aid (in euros)	Decision number	Beneficiary
1	2007	Estonia	Muuga	The Eastern Extension of Muuga Harbour	92 976 699	81 %	no aid	N 507/06	Majandus- ja Kommunikatsiooniministeerium, Harju 11; EE-15072 Tallinn
2	2007	Netherlands	Rotterdam	Extension of the port of Rotterdam (Contribution to the financing of public infrastructure and stake holding in the Port Authority of Rotterdam)	934 000 000	571 million euro for public infrastructure and 500 million euro for stake holding	no State Aid	N60/06	Project Mainportontwikkeling Rotterdam
3	2008	Germany	Jade-Weser-Port Wilhelmshaven	a) design and construction of port infrastructure (370 million euros); b) design and construction of terminal-related infrastructure (240.2 million euros); c) design and construction of container terminal and related buildings	960 000 000		no State Aid	N 110/08	JadeWeserPort Infrastruktur und Beteiligungen GmbH
4	2009	Greece	Pireaus	a) loading and unloading equipment in the Container Terminal (Case C 169/08) is excluded from this case; b) construction of a jetty pier (C 168/08) (see also SA. 28876 - allegations)	159 768 000	less then 50 %	35 000 000	C21/09	Port Authority of Piraeus
none	2010	no	no port project	no port project					
5	2011	Latvia	Ventspils	a) construction of a dry cargo terminal; b) construction of berths c) construction of breakwater; d) dredging; e) construction of railroads; f) renovation of mooring jetties; g) fortification of the coast of the channel	Unknown, for confidentiality reasons no figures provided	62.86 %	31 400 000	C39/09 (ex. 358/09)	Ventspils Port Authority
6	2011	Latvia	Krievu Sala	Relocation of freeport Rigo from the city centre to the currently unused port area named Kirevu Sala allowing the expansion of the City of Riga	195 380 916	61.10 %	119 387 658	N 44/2010	Riga Freeport Authority
7	2011	Netherlands	Rotterdam	Creation of a multimodal container hub 60 km from Rotterdam Sea terminal.	46 300 000	17.90 %	8 300 000	SA 32224	Ablasserdam container transferium

Annex VI

State aid cases in sea ports	Year	Country	Seaport concerned	Type of good covered, infrastructure (I) and/or superstructure (S)	Planned investment costs (in euros)	Aid intensity	Aid (in euros)	Decision number	Beneficiary
8	2012	Italy	Augusta	a) expanding existing port (82 000 m^2 for Container Storage and solid bulk (28.3 million euros); b) installing two gantry cranes for container handling (21.7 million euros) and strenghtening of a part of the existing dock (17 million euros); c) construction of a new dock and an adjoining yard (45 000m^2) (25.83 million euros); d) construction of a new dock (410 m and 116 000 m^2) (52.5 million euros)	145 330 000	68.87 %	100 088 771	SA 34940	Port Authority of Augusta
9	2012	Lithuania	Klaipeda	Construction of Infrastructure for a new passenger and Cargo Ferries Terminal in Klaipeda: a) investments in constructions by port authority 27 825 million euros; b) investments in cargo warehouses, control and inspection point, security related investments by private terminal operator (KKIKT) 21 335 million euros)	49 200 000	64 %	17 900 000	SA30742 (N 137/10)	Port Authority of Klaipeda (SE KSSA) and Klaipedos keleiviu ir kroiniu terminals (KKIKT)
10	2013	Spain	Cadiz	a) construction of a new container-terminal with breakwater access roads (with tunnel) dredging (108.4 million euros); b) refurbishment of cruise ship station (1 million euros); c) refurbishment of existing port facilities (17.53 million euros deducting 8.4 million euros for value of surface of 9.8 ha)	118 538 678	50.70 %	60 099 110	SA.36953	Port Authority of Baiha de Cadiz
11	2013	Greece	Pireaus	a) construction of breakwater and land area; b) networks (drainage, optic fibres, electricity-water supply)	120 000 000	95 %	113 900 000	SA.35418	Pireaeus Port Authority S.A. (PPA)

Annex VI

State aid cases in sea ports	Year	Country	Seaport concerned	Type of good covered, infrastructure (I) and/or superstructure (S)	Planned investment costs (in euros)	Aid intensity	Aid (in euros)	Decision number	Beneficiary
12	2013	Greece	Katakolo	a) Extension of windward pier (160 m); b) extension of existing quay in front of restaurants (63 m); c) additional works on existing pier (extension); d) construction of passenger reception building; e) extension/ renovation old warehouse; f) construction of an open air-theatre; g) reconstruction of surrounding areas and public spaces; h) construction of port traffic and passport-control building	12 265 965	91.23 %	11 190 240	SA.35738	Pygros Municipal Port Fund (PMPF)
13	2013	Spain	Santa Cruz de Tenerife	a) works for sheltering the harbour (protection and reinforcement of northern side of th quay and external breakwater (128 million euros); b) counter breakwater to protect southern side of the quay (27.8 million euros); c) commercial areas for storage solid bulk and containers (86.8 million euros); d) restauration of the nearby natural reserve (phase 1) (0.6 million euros)	243 800 000	27.48 %	67 000 000	SA.36223	Port of Santa Cruz de Tenerife and Ley de Puertos del Estado y de la Marina Mercante (LEPEYMM)
14	2013	Poland	Polish ports super-structures	Modification of the aid scheme N 546/2008 - Investment aid for the development of intermodal transport under Infrastructure and Environmental Operational Programme (budget increase from 111 million to approx. 170 million euros) due to the substantial need for modernising and investing in intermodal infrastructure in Poland. (port infrastructure will be especially targeted). a) intermodal transport: construction of logistic centres and container terminals, storage and handling facilities, internal roads and railways, water supply, electronic equipment; b) internal transport network within ports (roads, railways, underground passages, parking lots, storage yards; telecommunication systems.	170 000 000	50 % for port and intermodal infrastructure; 30 % for information and communication equipment		SA.36485	Aid is available to enterprises from EU Member States who perform or intend to perform intermodal transportation operations in Poland - such as operators of container terminals and logistics centres - with the exclusion of undertakings in financial difficulties and undertakings from whom the Commission has ordered the recovery of aid, as long as the aid has not been fully recovered.
15	2013	Italy	Capo d'Orlando	Breakwater dock, dredging, mooring, touristic infrastructure		48.71 %	20 020 000	SA.36621	

Annex VI

State aid cases in sea ports	Year	Country	Seaport concerned	Type of good covered, infrastructure (I) and/or superstructure (S)	Planned investment costs (in euros)	Aid intensity	Aid (in euros)	Decision number	Beneficiary
16	2014	Latvia	Ventspils	Improvement of soil stability of the embankment of the Venta River channel behind berth 2 and 3 - first decision	6 150 000	38.60 %	3 775 918	SA.38771	Port Authority of the Free Port of Ventspils
17	2014	Greece	Patras	a) upgrading of the port of Patras (5th pier); b) road and rainwater drain works; c) Terminal building 1; d) Terminal building 2; e) Auxiliary building,	52 247 600	100 %	52 247 600	SA.38048	Patras Port Authority S.A. (OLPa)
18	2014	Italy	Salerno	a) Expanding Port Entrance; b) Stabilising the dock, c) Dredging	73 000 000	97.28 %	71 016 396	SA.38302	Port Authority of Salerno (PAS) via Ministro deglo Affari esteri P.le della Farnesina 1 I-00194 Roma
19	2014	Latvia	Ventspils	Soil stabilisation			2 300 000	SA.38771	
20	2015	Latvia	Ventspils	Improvement of soil stability of the embankment of the Venta River channel behind berth 2 and 3 - second decision (see also SA.38771)	6150000 (see first decision in 2014)	increase aid from 38.6 % to 85 %	updated figure: from 3 775 918 euro up to 5 227 500 euro	SA. 40838	Port Authority of the Free Port of Ventspils
21	2015	Germany	Sassnitz	Extension of the port by constructing a new berth (No 10) to optimise the use of berths 8 and 9	5 100 000	88.68 %	4 523 000	SA.41865	Fährhafen Sassnitz GmbH
22	2015	France	Calais	Expansion of the Port of Calais and build a new cross Channel terminal to allow better operation of cross-Channel sea transport services	887 500 000	30.40 %	270 000 000	SA.39688	Port de Calais
23	2015	Italy	Taranto	Dredging and disposal of dredging materials due to inadequacy of the infrastructure to accomodate increasingly larger container ships	83 000 000	54 %	38 158 587	SA.39542	Port Authority of Taranto

Annex VI

State aid cases in sea ports	Year	Country	Seaport concerned	Type of good covered, infrastructure (I) and/or superstructure (S)	Planned investment costs (in euros)	Aid intensity	Aid (in euros)	Decision number	Beneficiary
24	2015	Germany	Wismar	Increase port capacity for wood handling by: a) extension of the wharfage; b) dredging and land reclamation; c) terminal for liquid goods; d) terminal for cooling water; e) environmental compensatory measures	37 141 615	65.98 %	24 506 881	SA.39608	Port Authority of the Seaport Wismar
25	2015	Germany	Wismar	Extension and upgrade of the existing cruise ship terminal by: a) extension the berth length by 240 m; b) building for Customs and Police; ISPS security fence; c) dredging; d) road construction; e) fresh/waste water facility; f) supply area for cruising ships; g) parking for buses	33 899 000	8.19 %	2 776 300 euros (the construction of a building for Police and Customs does not constitute state aid and is therefore not included in this amount	SA.39637	Port Authority of the Seaport Wismar
26	2015	Netherlands	Lauwersoog	Eliminating a bottleneck in the port which will be done by extending the fishing quay by 200 m	4 161 300	No aid	No aid	SA.39403	Exploitatiemaatschappij Havencomplex Lauwersoog
27	2015	Germany	Port of Maasholm	Fisher boat, refurbishment of the quay		No aid	No aid	SA.42219	
28	2015	Portugal	Port of Leixoes	Cruise terminal, marina (no effect on trade)		No aid	No aid	SA.43250	
29	2015	Latvia	Port of Lepaja	Dredging		75 %	32 300 000	SA.41734	
30	2015	Greece	Port of Mykonos	Passenger transport infrastructure, some touristic infrastructure (regional aid)	10 718 252	100 %	10 600 000	SA.39232	Municipal Port Management Organisation (MPMO) of Mykonos
31	2015	Germany	Port of Rostock	Several investments, dry cargo without bulk goods	7 182 900	80 %	5 600 000	SA.43376	Rostocker Fracht- und Fischereihafen GmbH

Reply of the Commission

Executive summary

III First indent

The Commission notes that the TEN-T Regulation and the Core Network Corridor Work Plans foresee the developing of strategies at EU level so as to ensure that European priorities are taken into consideration for port developments.

The TEN-T Regulation provides for an EU-wide infrastructure planning since 2013 by establishing a Core and Comprehensive networks associated with technical standards and implementation deadlines. This regulation results from the analysis of the traffic volumes of EU seaports.

The implementation of the TEN-T Core and Comprehensive networks is supported by governance tools such as the Corridor Work Plans, the support of the European Coordinators, the Corridor Fora that help better monitoring TEN-T implementation and identifying the projects pipeline.

The Commission also develops a long-term strategy for port activities aiming at increasing the efficiency of port services and the transparency of public funding. In this context, the Commission has put forward a draft regulation[1] which is currently being examined by co-legislators. It also monitors the respect of Article 49 TFEU on the freedom of establishment. This should contribute to achieving a better use of the infrastructure capacity in ports and to a better management of both EU and national public funding.

In the framework of regional policy, regarding the programming period 2014-2020, the requirement for long-term infrastructure development is one of the *ex ante* conditionalities in the area of transport (Thematic Objective 7). Amongst other requirements, Member States are obliged to approve Comprehensive Transport Plans, which includes developing long-term strategies for ports.

III Second indent

The Commission considers that port infrastructure is planned and designed with a long-term lookout (10 to 20 years) after its completion. Investments in ports can therefore not be assessed with a relatively short-term perspective.

The Commission considers that after 3 years of the conclusion of the works, it is premature to conclude that investments in underused ports are ineffective and a waste of money.

The financial crisis in 2008/2009 has led to a decrease in demand, which has resulted in underused capacity in almost all transport sectors, not only in sea transport. This would have affected the needs assessment.

The 2014-2020 Cohesion policy has introduced a performance framework to review each operational programme. Amongst other things, this framework includes the possibility of suspending payments or applying financial corrections, in case of underperformance.

1 COM (2013) 296: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a framework on market access to port services and financial transparency of ports.

III Third indent
Regarding newly audited projects, the Commission acknowledges the delays and cost overruns but notes that these risks are inherent in infrastructure investments. Maritime infrastructure ventures are complex and lengthy. Such projects are prone to design and budget changes. In particular, the Commission acknowledges the complexity of administrative authorisation procedures and is examining possible ways to streamline the regulatory environment, for instance through the set-up of a one-stop-shop as recommended by the Court of Auditors.

It considers that the Managing Authorities should be in a position to select from different mature project applications in order to fund those projects that would better achieve the programme objectives. However, competition between major infrastructure projects is often limited, either because there are not many projects ready to be implemented or because they are not in line with the objectives set in the programme.

III Fourth indent
On the basis of information received from the Spanish authorities the Commission notes that the used capacity for most of the ports examined by the Court has been increasing. The Commission underlines that the Courts' findings should be interpreted in the context of an adequately long-term perspective (10-20 years) of ports investments. Moreover, the effects of the financial crisis in maritime transport should also be taken into consideration.

III Fifth indent
The Commission notes that port connections with the hinterland are analysed and taken into consideration in the Corridor Works Plans.

Infrastructure investments are 'building blocks' creating and improving the overall transport network. Individual projects selected for funding by the Commission are therefore always part of a larger 'global project' encompassing various individual projects.

However, not all investments can be made at the same time and must therefore be prioritised to match the needs in the best possible way while taking into account the resources available.

III Sixth indent
The Commission considers that the consultation arrangements for proposed EIB loans are in accordance with the procedure set out in Article 19 of the EIB Statute which applies to all investments to be financed from the EIB's own resources. The role of the Commission is to provide an opinion on the conformity of the investments financed from the EIB's own resources with all the relevant EU legislation and policies.

The Commission's opinion is formulated on the basis of the information provided by the EIB in the framework of the Article 19 Procedure.

It can issue a negative opinion if the Commission does not receive sufficient information to be able to assess the conformity with EU legislation and policies.

III Seventh indent

The Commission has been working on establishing a level playing field for European ports in several ways: ever since the judgment in *Leipzig Halle* in 2011, the Commission has examined numerous individual cases which were either notified to the Commission or in which competitors lodged a complaint with the Commission. This case practice contributed to ensuring that ports compete on a level playing field.

Further facilitations of maritime transport reporting formalities expected with the eManifest project, the European Maritime Single Window initiative as well as with the implementation evaluation and revision of the reporting formalities directive.

As regards superstructures, the Commission underlines the following: if funding of superstructures constitutes state aid within the meaning of Article 107(1) of the Treaty, this does not necessarily prohibit Member States from financing such superstructures. The Commission can declare it compatible with the Treaty. State aid to ports is governed by Article 107(3)(c) of the Treaty.

As regards monitoring, the Commission underlines that the system of state aid control is based on an *ex ante* assessment and loyal cooperation of the Member States. Given the Commission's resources it is not feasible to systematically check all individual decisions *ex post*. However, all decisions are published and allow interested parties to file a complaint in case they consider that breaches have occurred. In this regard the Commission considers that there are sufficient instruments both at national and EU level to safeguard a proper conduct of national authorities as regards the awarding of concessions and allowing unsuccessful bidders to pursue possible irregularities.

IV First indent

The Commission accepts the recommendation to monitor the core port capacity and to reassess the development plans of Member States. The Commission will study the macroeconomic impacts of completion of the TEN-T network.

IV Second indent

The Commission accepts the recommendation.

IV Third indent

The Commission accepts the recommendation. A development plan for port sector will be achieved notably by the Detailed Implementation Plan for the Motorways of the Seas programme and the key waterways are included in the respective work plans for core network corridors.

IV Fourth indent

The Commission notes that this recommendation is partly addressed to the Member States.

Insofar as it is concerned by it, the Commission accepts to implement this recommendation as described below and considers it partially implemented.

The Commission has launched a study to identify ways of streamlining the administrative procedures for TEN-T projects. The key problems have already been mapped and currently the possible solutions are being analysed. The Commission will specifically examine the possibility to create a 'one-stop-shop' for project promoters to streamline and accelerate the permitting procedures for TEN-T projects, along with other streamlining measures. It will also envisage the design of a single authorisation framework for EU relevant TEN-T projects. As a next step, the Commission intends to carry out an impact assessment in 2017 to consider putting forward a legislative proposal.

The Commission has already announced these initiatives in the Communication of 1 June 2016: Europe investing again Taking stock of the Investment Plan for Europe and next steps[1]: '(…) the Commission will explore the possibility to design a single EU authorisation framework that would directly apply to large projects with a cross-border dimension or major Investment Platforms that involve national co-financing replacing a broad range of authorisation procedures at EU and national level.'

IV Fifth indent

The Commission accepts the recommendation but points out that it can only apply financial corrections when there is a breach of the legal conditions.

IV Sixth indent

The Commission partially accepts the recommendation. It will reassess the need for further support in these two areas.

However, investments in containers, transhipment and storage are eligible for EU co-funding, if equal and non-discriminatory access for all operators can be guaranteed, also taking into account, where necessary, the dual function of certain infrastructure for transhipment and gateway.

Regarding superstructures not within the public remit, the Commission notes that these are excluded for funding in the framework of CEF, as long as they are not linked to environmental and energy policy goals, and of objective 7 (transport) of the ERDF. Superstructures may be allowed under other areas of the ERDF for example as a productive investment.

IV Seventh indent

The Commission accepts the recommendation as far as CEF is concerned, and in so far as no further congestion of the hinterland connection is created by magnifying the concentration of maritime flows to a few ports.

IV Eight indent

The Commission partially accepts the recommendation with regards to the EU-added value and, where applicable, the private investment component-related conditionalities as explained below. However, regarding the specific cases of maritime accesses to ports (such as dredging), as well ports located in peripheral regions (islands), securing private investment components is not always achievable.

The award criteria for projects applying in the CEF calls for proposals already include the demonstration of 'EU added value' and, where applicable, the need to have the potential of stimulating public and private investment, as referred to part V of Annex I of the CEF Regulation. CEF calls require as of 2015 systematic submission of cost–benefit analyses demonstrating the amount of required EU support and highlighting the project impacts.

IV Ninth indent

The Commission accepts the recommendation but points out that changes to the Memorandum of Understanding cannot be imposed unilaterally.

IV Tenth indent

The Commission does not accept the recommendation. The Commission services participating in the inter-service consultation of the Article 19 procedure already have the possibility to provide a negative opinion on a project where they have critical remarks. As long as such a negative opinion is maintained by the service concerned, the Commissioner in charge of the economic and financial affairs will not approve a positive opinion through an empowerment procedure.

IV Eleventh indent

The Commission does not accept the recommendation. It has been working on providing guidance on the applicable state aid rules in the ports sector through the development of its case practice, the publication of Analytical Grids for Infrastructure projects and the adoption of the Notice on the Notion of State aid. The Commission is, furthermore, currently working on an extension of the General Block Exemption Regulation (GBER) to port infrastructure funding, which will provide further guidance. Issuing port specific state aid guidelines, in addition to the measures mentioned above, is, at this stage, not planned.

In the view of the Commission, the issue can be re-examined once the GBER extension is in place and sufficient case practice has been developed.

IV Twelfth indent

The Commission accepts the recommendation and will strive to continue to ensure a consistent analysis of user-specific superstructures in its assessment of individual state aid cases. The Commission, furthermore, intends to provide further guidance as regards user-specific superstructures in the GBER.

IV Thirteenth indent

The Commission accepts the recommendation.

It already increased the number of *ex officio* investigations. Following the adoption of the GBER further resources will be available for such investigations. The adoption of the GBER is currently foreseen for the first half of 2017.

IV Fourteenth indent

The Commission notes that this recommendation is addressed to the Member States.

Member States are already obliged, under Article 108 TFEU, to notify systematically any public financial support for port infrastructure projects which constitute an economic activity. The Commission observes that it does not have any competence to demand that Member States inform it of any public financial support which does not constitute state aid within the meaning of Article 107 TFEU.

IV Fifteenth indent

The Commission does not accept the recommendation as it would introduce an additional reporting requirement and thus increase the administrative burden for EU Member States administrations without clearly leading to proportionate benefits.

IV Sixteenth indent

The Commission accepts the recommendation.

The Commission acknowledges that further simplification efforts are needed to reduce administrative burden in the field of maritime transport.

It notes that actions are already ongoing on maritime transport reporting formalities through the launch of the e-Manifest pilot project with a focus on the 'reporting once' principle for the industry as well as through the development, together with EMSA, of a European Maritime Single Window service through which all ships could report in a standardised manner.

Furthermore, the Commission is currently conducting an evaluation of the directive on maritime reporting formalities which may possibly lead to its revision.

Introduction

04

The concentration of traffic in certain ports is due to their proximity to the major shipping routes and their role as transhipment facilities for feeder connections. It results from historic and geographic development of ports. The Commission considers that this is not a negative phenomenon per se.

13

The Commission considers that customs formalities for Union goods moving between EU ports have been reduced to the minimum possible and are much lighter than for goods that come from other countries. In essence, such formalities for Union goods only involve a simple proof of the Union status at re-entrance into the EU. Even that proof is not needed when the goods are moved by an authorised 'Regular Shipping Service'. Another advantage is that non-Union goods moving between EU ports do not need to be placed under a custom transit procedure unless they are moved together with Union goods and transported by an authorised 'Regular Shipping Service'. In that case, a rather simplified transit procedure applies which is based on the maritime manifest and includes a waiver from a financial guarantee.

The 'Blue Belt' initiative was launched to create this level playing field by simplifying customs procedures, and through the establishment, by 1 June 2015, of the national maritime single windows to smoothen the submission of maritime transport formalities, as required by legislation.

The new customs legislation (Union Customs Code) entered into force on 1 May 2016 for which a transitional period applies up to 2020, notably for the establishment and/or enhancement of electronic systems for the reporting of customs data.

23
Port investments will only receive rather modest support from EU sources of co-financing: Cohesion Fund/ERDF support is only provided in limited cases where the strategic importance of the investment is established (e.g. in a comprehensive transport plan), and would only to cover the funding gap. This means that Cohesion Funds/ERDF would not displace private investments, rather support them where necessary.

25
The Commission notes that by January 2012, 25 of the 27 projects had been completed. Twenty-two out of them were in use even though four projects needed complementary investments to make an effective link to the hinterland. For three projects their effectiveness and use had to be further improved.

Observations

31
The Commission's infrastructure policy (TEN-T planning) relies on a thorough and transparent methodology which is based on traffic volumes of EU ports to determine their inclusion in the core or the comprehensive network.

Any cost–benefit assessment for a given investment makes assumptions on the future traffic flows, taking into account the historical data, traffic simulations but also expert judgement on how a new investment can increase the number of units handled, or how it will contribute to operate the units more efficiently.

Long-term traffic forecasts may vary significantly in real terms due to changing market conditions in global economies, technology shifts and other factors influencing this forecast.

34
The Commission notes that the TEN-T Regulation and the Core Network Corridor Work Plans foresee the developing of strategies at EU level so as to ensure that European priorities are taken into consideration for port developments.

Moreover, as far as ESIF are concerned, the Commission ensures the existence and implementation of national transport plans in the framework of the *ex ante* conditionality assessment for the programming period 2014-2020.

Box 1 — Third indent

Italy's national plan was only recently put in place. As such, its implementation will generate new port investment plans for the so-called Autorità di Sistema Portuale (Piano regolatore di sistema portuale) over the coming years.

The Commission is withholding ERDF programme for non-fulfilment of *Ex Ante* Conditionality 7.3 (in line with the Country Specific Recommendations expressed in 2014 and 2015) pending the full implementation on the port's planning and reform, including a comprehensive dredging plan, the set-up of new 'port basin' authorities grouping ports in the same areas, cutting the red tape (national maritime single window), etc.

Box 1 — Fourth indent

In 2014 the Implementation Document to the Transport Development Strategy was adopted by the Council of Ministers.

In the previous years, many urgently needed investments were planned and properly implemented despite the fact that the then existing strategy was not well monitored. The turnover in Polish ports has been increasing every year and ESIF from different periods have assisted and will continue to assist this process by providing funding to important infrastructural investments.

The non-maritime projects were complementary to investments in ports and there is only a single case where the modernisation of quays was done together with its conversion into walking area.

35

The Commission notes that the calculation of transport capacity is a complex task where many factors must be taken into consideration and the calculation methods may vary between countries, types of ports or goods transported.

Moreover, the total capacity is not the only or the main measure of efficiency, and it should be viewed with the long-term perspective applied when designing the ports.

Furthermore, transhipment traffic has in the last decade become extremely volatile and is linked to market options of large private investors.

36

The Commission notes that job and growth induced by ports should not be considered only within ports. Ports are the transit point for 75 % of external trade and 40 % of internal trade, where the maritime is the most competitive (and less energy-intensive) mode. Moreover, infrastructure works do not create jobs only through the construction works, but also on a longer term effect sectors which benefit indirectly from it, such as tourism and logistics.

Impact on growth and job ought to be established through an evaluation process, including the enhanced competitiveness due to reduced logistics and transport costs for the area affected.

The Commission assessed the economic impact of the implementation of the TEN-T policy, including its port component[2]. The Commission intends to make an analysis of overall impacts on jobs and growth in 2017 of completing the Trans-European Transport Network projects at European scale, building on the preliminary findings and results of the ongoing Mid-Term Evaluation of the Connecting Europe Facility programme.

In the framework of Regional Policy, data on job creation was collected through the relevant core indicator at the level of Operational Programmes (OPs), taking into consideration that reporting on these was not obligatory in the 2007-2013 programming period. For the 2014-2020 period, use of the relevant common indicator is obligatory where relevant, still at OP level (see paragraph 79 on setting indicators set at OP level).

40

The Commission also develops a long-term strategy for port activities aiming at increasing the efficiency of port services and the transparency of public funding. In this context, the Commission has put forward a draft regulation[3] which is currently being examined by co-legislators. It also monitors the respect of Article 49 TFEU on the freedom of establishment. This should contribute to achieving a better use of the infrastructure capacity in ports and to a better management of both EU and national public funding.

The Commission is expected to report on this strategy in 2018.

41

All ports are connected to their hinterland, at least by road. The Commission notes that the objective it pursues is to have these ports connected with rail and, whenever geographically possible with inland waterways.

42

The Commission recalls that the TEN-T Regulation currently in force results from the agreement between the European co-legislators following the ordinary legislative procedure.

The Commission proposal for the TEN-T Regulation[4] port was based on the objective methodology that had been widely consulted before with the stakeholders and Member States and published alongside the legislative proposal. The methodology, prepared by an expert group, included volume-based criteria as well as other criteria, in order to ensure the necessary geographical coverage.

The number of core ports was subsequently extended by co-legislators to include ports located on islands[5].

The Commission notes that apart from volume-based criteria, the selection took into account the need for cohesion of the EU territory. This avoided that some Member States, like Romania or Bulgaria, would have been left without any core port. For details, please see point 2.1(b) of the Planning Methodology.

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2 Study on the cost of non-completion of the TEN-T: http://ec.europa.eu/transport/themes/infrastructure/studies/doc/2015-06-fraunhofer-cost-of-non-completion-of-the-ten-t.pdf

3 COM (2013) 296: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a framework on market access to port services and financial transparency of ports.

4 COM 2011(650).

5 Heraklion, Huelva, Las Palmas, Santa Cruz de Tenerife, Augusta, Cagliari, Moerdijk, Galaţi, Milford Haven. The Commission proposal did not include the Croatian port of Rijeka.

44

The Commission monitors the evolution of the yearly traffic volumes of the ports, but does not monitor their capacity. The Commission believes that traffic volumes are a more relevant indicator for policy decisions.

In accordance with Article 49(4) of the TEN-T Regulation, this information is used to include or exclude ports from the TEN-T comprehensive network. This exercise is based on objective and comparable data from Eurostat.

48

The Commission considers that the objective of the funding is not only to promote the best performing ports in Europe but also to promote short sea shipping and, in case of cohesion policy, to enhance economic growth in peripheral and less developed regions of the EU. Concentrating of public funding in best performing ports would further deteriorate the situation of smaller ports and increase the pressure on overland connections to the North Sea Ports.

Furthermore, the increasing volumes of transhipment in the North Sea Ports result in a development of feeder services to other sea basins. This has to be effectively addressed to minimise the amount of deep sea cargo coming to Europe via the North Sea Ports and continuing its way overland, using in many cases road transport. Therefore, development of port facilities in smaller ports aims at increasing attractiveness of short sea shipping services as well as attracting direct oceanic calls to other ports than the North Sea, what was exactly the case in Gdańsk for instance.

49

The call for proposals for CEF grants launched in 2014 has been almost three times oversubscribed for the funding objective for which this project had applied.

In the selection and award process, the Commission had to make priorities and considered that other projects demonstrated higher EU added value, relevance, maturity and quality of applications.

Box 2 — Second alinea

The Commission would like to point out that the Nord-Ostsee-Kanal (NOK) is included in the core network and is thus considered a priority. Moreover, even if it is not officially included in any of the Core Network Corridor, it may use CEF financing being listed in Part III of Annex I to the CEF Regulation.

The CEF financing targets in particular projects which cannot be financed in any other way then through grant funding. This is done in order to reduce deadweight effect of EU funds. All the projects which have clear revenue streams are directed towards financial instruments, including CEF instruments as well as the newly created EFSI.

50

Infrastructure investments require long-term planning and must meet long-term needs. Therefore, they will normally not be used in full in the short term. Ports infrastructure is typically intended for the 10-20 years following their construction. Port investment cannot be analysed with a short-term perspective.

The financial crisis in 2008/2009 resulted in a decrease of traffic and slowed down the use of additional capacity. It also led to the change, delay or cancellation of many investment plans.

Delays and cost overruns are inherent risks to infrastructure investments and reasonable variations are part of risk management.

53
See Commission reply to paragraph 50.

53 Second indent
The Commission considers that port infrastructure is planned and designed with a long-term lookout (10 to 20 years) after its completion. Investments in ports therefore cannot be assessed with a relatively short-term perspective.

The Commission considers that after 3 years of the conclusion of the works, it is premature to conclude that investments in underused ports are ineffective and a waste of money.

ESIF Funds can support only those major investment projects which can clearly demonstrate, by a thorough cost–benefit analysis (CBA), that they are desirable from an economic point of view and that they are financially viable. For the majority of these projects, the data and information used in the CBAs originated from before the crisis.

Regarding CEF Funding, the Commission notes that financial support is prioritised towards projects which contribute to port accessibility, multi-modality, hinterland connections rather than capacity increase. Moreover, each project submitted is subject to a cost–benefit analysis (CBA), verified by independent experts, in order to reduce the risk of ineffective investments. These CBAs are supported by estimated traffic volumes.

The financial crisis in 2008/2009 has led to a decrease in demand resulting in underused capacity in almost all transport sectors, not only in sea transport. This would have affected the needs assessment.

The 2014-2020 Cohesion policy has introduced a performance framework to review each operational programme. Amongst other things, this framework includes the possibility of suspending payments or applying financial corrections, in case of underperformance.

56
The Commission acknowledges the complex regulatory framework in Member States for the authorisation of transport projects and notes that there is ongoing work on addressing this issue for projects of EU relevance.

57
The Commission acknowledges the issue of delays in the construction of major infrastructure. It has raised it regularly in monitoring committees, bilateral meetings and in formal letters to Member States.

The responsibility of determining powers of authorisations lies with national authorities. However, the Commission has repeatedly advised the Member States' authorities of the need to simplify decision-making procedures and has recommended not placing any additional burden on the administration of EU funds.

59
The Commission stresses that during the negotiations on the 2014-2020 multiannual financial framework, the Commission has tackled these issues by requiring both a new plan for ports and logistics, which has now materialised, and new public procurement rules (under the *ex ante* conditionality for the period 2014-2020).

More specifically, the national ports' plan was also part of the CSR 2015, issued by the Council following the Commission's proposals.

Furthermore, the Commission launched a study to identify the main regulatory and administrative obstacles for TEN-T projects (including ports) and envisage possible ways of addressing these issues. Amongst the possible options being analysed are the creation of a 'one-stop-shop' for project promoters to streamline and accelerate the permitting procedures for TEN-T projects and the design of a single EU authorisation framework. As a next step, the Commission intends to carry out an impact assessment in 2017 to consider putting forward a legislative proposal.

60
The Commission notes that the new port plan in Italy will entail a series of simplification measures in the adoption of port master plans. This should reduce the time for adoption.

61
Maritime infrastructure represents complex and lengthy works. Such projects are prone to design and budget changes. This is recognised in national and EU procurement rules by allowing for certain levels of flexibility.

In the case of Spain, the Commission notes furthermore that the Member State does not declare cost overruns as part of statement of expenditure to the Commission. As a result, these cost overruns are not co-financed by the EU budget.

See also Commission reply to paragraph 53.

62
The aim of ERDF programmes relates primarily to regional and local development. Therefore, the projects must comply with cohesion policy objectives and with the objectives laid down in each specific programme. These have been fulfilled.

The Commission recalls the impact of the 2007 economic crisis (with a very strong reduction of GDP growth) on the EU sea maritime traffic and the fact that the activity recorded in the EU-28 in 2014 has not yet reached the previous level of activity of 2007.

Regarding the Spanish ports, the Managing Authority informed the Commission that the investment has been completed according to the plans foreseen and that the ports are operational and in a development phase. There is activity in all of them and the port authorities are planning complementary investments to further develop the activity in these ports.

The activity has been increasing since the last audit of the Court. In addition, certain rail and road connections (e.g. Ferrol and Langosteira) have been approved, which will boost their activity.

As for Augusta in Italy, the Commission notes that only around EUR 1 million have been provided from the EU budget.

63(i)
Port construction projects consist of major engineering works that require a long period of planning and construction, with many factors that can influence progress. Ports are not designed for a capacity within 5 years, but are instead planned for the foreseen capacity in 20 or more years.

See Commission reply to paragraph 53.

63(ii)
As regards the long-term planning horizon, a full use of capacity by 2010 was not expected. In view of the ongoing economic crisis and the reduced demand for transport capacity, an increase in use between 2010 and 2015 was not to be expected.

See Commission reply to paragraph 62.

64
The Commission notes that infrastructure investments are building blocks creating and improving a network. Individual projects are therefore always part of a larger global project. All investments cannot be made at the same time but will have to be prioritised to match the needs in the best possible way while taking into account availability of the necessary resources.

It notes that in the period 2014-2020 both ERDF and CEF have given greater emphasis to connecting ports to the transport network (and not just port infrastructure).

The Member States should ensure that the best use is made of limited EU funds. Investments in ports need complementary investments in road/motorway and railways in order to ensure their effectiveness. Some of these investments are being financed under EU programmes or by national funds.

Regarding CEF projects, the Commission notes that port connections with the hinterland are taken into consideration in the Corridor Works Plans.

This will be prioritised when funding decisions are made.

65
The Commission notes that it is not unusual that, within a global project, different actions are carried out subsequently according to the technical and financial capacity of the project promoter.

For instance, the ports of Langosteira and Ferrol were initially connected to the transport network by road. Rail access to the port of Ferrol has been approved by the Port Accesibility Financial Fund as mentioned in the Annual Plan of 2016. Concerning the rail access to Langosteira the project design will be finished by 2017 and the works will end before 2021.

67
Maritime transport is a competitive industry and the Commission considers that competition is, overall, positive. It acknowledges that increased capacity in one port may temporarily have an impact on other ports.

68
The Commission considers that the impact of an activity decline due to a cannibalisation effect in 6 out of 171 ports remains limited. See Commission reply to Box 5.

69
Regarding the two neighbouring ports of Gdańsk and Gdynia in Poland, the Commission recalls that the two ports are complementary and they both enjoy growth in the number of operations. For example, Gdańsk has a large liquid bulk terminal, which Gdynia does not. There is room for deepening the cooperation between the two ports and for exploring further ways of promoting the complementarity between the two ports. This is what the Commission is trying to promote via the Motorways of the Sea programme as well as activities of the European Coordinator for the Baltic Adriatic Core Network Corridor. These initiatives shall enable the better streamlining of available funds for the benefit of this port cluster in the Bay of Gdańsk.

Furthermore, the Partnership Agreement signed for the period 2014-2020 specifically requires that ESIF-financed investments in the two neighbouring ports be based on cooperation and complementarity.

As for Italy, the new Italian port plan should address this issue by merging two or more contiguous ports. According to the plan, this will be the case of Salerno and Napoli.

76
The Commission considers the consultation arrangements for proposed EIB Loans are in accordance with the procedure set out in Article 19 of the Statute of the European Investment Bank (EIB), which applies to all investments to be financed from the EIB's own resources. The role of the Commission is to provide an opinion on the conformity of the investments financed from the EIB's own resources with all the relevant EU legislation and policies.

The Commission opinion is formulated on the basis of the information provided by the EIB in the framework of the Article 19 Procedure. It can issue a negative opinion, if the Commission does not receive sufficient information to be able to assess the conformity with EU legislation and policies.

77
The technical and financial appraisal of a project is not within the scope of the Article 19 Procedure. See also Commission reply to paragraph 76.

78
During the preparation of the Commission's formal opinion, the Commission services participating in the EIB Interservice Group can provide the following opinions on a project:

- Favourable opinion,
- Favourable opinion with comments,
- Negative opinion.

In case of an unfavourable opinion by the Commission, an approval of the project by the Board of Directors of the EIB requires an unanimous approval and the Commission abstaining.

In the Commission internal consultation process there are some cases every year where a Commission service provides a negative opinion on a project. In such a case, the EIB either provides satisfactory replies on the issues raised by the relevant service for it to be able to lift its negative opinion or withdraws the project and does not present it to its Board of Directors.

Box 5 — Fourth alinea

The Commission notes that the ports of Cadiz and Malaga are mixed-used ports (import, export and passengers). Freight traffic loss in these ports may also be attributed to the effects of the financial crisis. In the case of Cadiz, this has been compensated by a substantial increase in passenger traffic.

79

The Article 19 procedure concerns an *ex ante* check of loan applications for investments to be financed on EIB own resources in view of their compliance with EU legislation and policies. It does not concern monitoring of such loans by the Commission which is the sole responsibility of the EIB.

However, the Commission does receive information from the EIB on projects where an EU guarantee is provided.

80

Already, in previous periods, the Commission has assessed expected results of projects in the context of the CBA. However, it was unable to make financial corrections based on under performance. This has changed in the 2014-2020 period, where financial corrections are possible under the performance framework.

Under the 2014-2020 period, CBA has been introduced as a pre-requirement of CEF funding in order to make the instrument more result-oriented than the TEN-T programme.

Box 6

The Commission notes that the ferry terminal in Gdynia was not part of the Commission decision granting support to the Motorway of the Seas (MoS) project. It was understood that the terminal itself will be completed by 2016, which was considered a reasonable delay for infrastructure projects of similar dimension, especially in a period of economic crisis and reduced traffic demands.

The Commission notes that the MoS Gdynia-Karlskrona project followed a double pre-selection process at the time and was proposed after reaching support of the Baltic Task Force involving Transport Authorities from 7 Member States, who not only accepted ownership but recognised the quality of this individual project as well. The project followed the applicable procedure and was subject to both internal and external evaluation.

EU support is given based on the planned outcome, i.e. the planned works/studies. Traffic forecasts and other indicators, e.g. the referred key performance indicator (KPIs) are used in the selection of proposals but are not the basis for paying EU support.

The Commission considers that the project cannot produce all the expected results until the investments in Gdynia have been completed but some results can still be produced based on the investments completed.

82
The Commission does not agree that the absence of state aid guidelines on ports and differences in customs control practices can make a port more attractive than others for global shipping lines (see Commission replies to paragraphs 92 and 93).

83
The Commission considers that, following the *Aéroport de Paris* judgment, the case practice on this matter developed only gradually, which is the main reason why before the *Leipzig Halle* judgment Member States, which under the Treaty were responsible for notifying any aid, considered that the construction of general port infrastructure would typically be non-economic in nature, meaning that its public financing would not fall under state aid control and not require a notification. The very few notifications the Commission nevertheless received during this period were primarily made for reasons of legal certainty and in most cases resulted in the finding of the Commission that the measure did not constitute state aid.

Following the clarifications given in the *Leipzig Halle* judgment in 2011, the number of notifications increased significantly. In the period from 2011 until the end of 2015 the Commission issued 27 state aid decisions concerning funding of port infrastructure.

85
The Commission attaches certain conditions to co-funding superstructures under multimodality and MoS, in particular that it must be open to any user on a non-discriminatory basis. Moreover, the following conditions are applied: the investment needs to be correlated to the upgrade of maritime link, justified by increased ship handling capacity and should serve the purpose of the action for at least 5 years after its completion.

Nonetheless, the Commission services will reassess the need for further support in these two areas for the subsequent calls.

86
The Commission underlines the following: if funding of superstructures constitutes state aid in the meaning of Article 107(1) of the Treaty, this does not necessarily prohibit Member States to finance such superstructures. The Commission can declare it compatible with the Treaty. State aid to ports is governed by Article 107(3)(c) of the Treaty, according to which aid might be considered compatible if such aid ‘facilitates the development of certain economic activities or of certain economic areas’ and ‘does not adversely affect trading conditions to an extent contrary to the common interest’.

Box 7

The Spanish port investment co-financed from ERDF did not qualify as a major project. The expenditure was certified by the MS which accepted it as eligible.

By reference to information currently available, it appears that the investment was accepted on the grounds that it was considered a 'productive investment', as allowed by the regulations.

87

The Commission notes that the system of state aid control is based on an *ex ante* assessment and loyal cooperation of the Member States. Given the Commission's resources it is not feasible to systematically check each individual decision *ex post*. However, all decisions are published and allow interested parties to file a complaint in case they consider that breaches have occurred. In this regard the Commission considers that there are sufficient instruments both at national and EU level to safeguard a proper conduct of national authorities as regards the awarding of concessions and allowing unsuccessful bidders to pursue possible irregularities.

Box 8

On the basis of the information received from the Court of Auditors, the Commission will investigate the issue mentioned under Box 8 and assess whether potential state aid issues are present.

88

Under the Treaty Member States are obliged to notify any state aid to the Commission before granting it.

Before 2007, Member States could legitimately consider that public financing for port infrastructure projects does not constitute State aid and were, therefore, not obliged to notify such projects.

During 2007-2010 there was considerable uncertainty as to whether funding for such projects would constitute state aid and it was generally presumed that it does not.

Since the *Leipzig Halle* judgment in 2011, the number of notifications has increased significantly. See Commission reply to paragraph 83.

89

The Commission notes that the number of complaints it receives, depends on, inter alia, the market and the degree of competition between different market actors. In this regard, a low number of complaints could point towards either a low amount of (potential) infringements of state aid rules or to a rather limited degree of competition between different market operators in a given sector.

91

The Commission observes that the obligation to notify any plans to grant state aid stems directly from Article 108 of the Treaty. Member States are, therefore, obliged to notify any projects involving state aid. In cases where the Commission becomes aware of aid having been granted without a previous notification it may, under Article 12 of the Procedural Regulation 2015/1589, initiate an investigation. In addition to this, the Commission regularly investigates cases of potential aid on the basis of complaints it receives from competitors.

92
The Commission may adopt port specific state aid guidelines, but it is not obliged to do so, as it has a wide margin of discretion under Article 107(3)(c) of the Treaty (see also Commission replies to paragraphs III and IV). The fact that no further guidelines or documents exist cannot be seen as creating legal uncertainty since the Treaty provisions constitute an exhaustive legal framework. Also for other sectors (e.g. until very recently, culture) no further guidance existed other than individual state aid decisions.

Notwithstanding the existing legal framework, the Commission has been working on providing guidance on the applicable state aid rules in the ports sector through the development of case practice, which has clarified numerous points (such as eligible costs, aid intensities, compatibility criteria), the publication of Analytical Grids for Infrastructure projects in September 2015 and the adoption of the Notice on the Notion of State aid in May 2016. The Commission is, furthermore, currently working on an extension of the GBER to port infrastructure funding. These measures taken together have already provided specific guidance on the applicable state aid rules to the sector and will continue to do so.

Finally, the Commission is always available to provide guidance on individual cases in the course of a pre-notification procedure. This opportunity is routinely used by Member States in order to prepare a notification.

In light of this the Commission, at this stage, is not convinced that the issuing of port specific state aid guidelines, in addition to the measures mentioned above, is useful and necessary. This question can be revisited once the GBER extension to port infrastructure funding is in place and the Commission has developed sufficient case practice.

93
Customs controls are based on automatic risk analysis. If a particular routing or certain operators present at the port constitute higher risks, this will lead to more (and more thorough) controls. In such cases, the differences in customs control practices may be justified and appropriate with regard to harmonised implementation of the Custom Union.

The Commission considers in this context that customs controls are not — and should not be — an aspect of the port's attractiveness.

94
In 2013, the Commission evaluated the customs risk management framework already in place (see Commission Communication COM(2013)793). In 2014, the Communication defining the Customs Risk Management Strategy and Action Plan (COM(2014)527) aiming at an improved risk management framework has been endorsed by the Council and is being implemented.

Simplified customs procedures are based on authorisations issued after an examination of the economic operator and its reliability, assessed against strict criteria laid down in the Union Customs Code. All customs controls are based on a risk analysis and it is therefore not necessary and not in line with Union legislation to require a certain number of controls.

95
Under the Union Customs Code, all Member States have to provide, under equal circumstances, the same simplifications; there should be the same treatment and therefore no advantage to choose one over the other port or transport route based on the likelihood for controls or availability of simplifications. If a port is more efficient and providing better logistical service, it will continue attracting more trade and transport, but not based on the likelihood of controls or availability of simplifications.

96

A port that is efficient and in which reliable companies operate might face fewer controls (the latter being based on risk analysis) and might indeed have a competitive advantage.

Subsequently to the case referred to by the Court, in 2014 the Commission identified the actions needed to strengthen the controls of importers as set out under Objective 4 of the Customs Risk Management Strategy and Action Plan (COM(2014)527) to 'strengthen capacities to secure equivalence in effective implementation of the Common Risk Management Framework (CRMF) and to increase responsiveness to newly identified risks'.

97

The Commission's inspection did find weaknesses in the Dutch customs procedures. The Dutch authorities have confirmed subsequent to the inspection that from July 2015 the EU status of all shipments will always be verified. The Commission's inspection report indicated that of the 200 bills of lading not fully discharged daily on the expiry of the 45 days limit for discharge, only 15 to 20 are further examined by the Dutch authorities. In the case of local clearance procedures there were no checks, electronic or other, carried out to ensure that the summary declaration for temporary storage of the goods was consistent with the subsequent declaration of the goods for a customs procedure before the ending of customs supervision. The Commission services' follow-up of all these points with the Dutch authorities is ongoing.

98

The data referred to by the Court is provided by the Member States themselves and may not be entirely comparable across Member States, notably due to the way controls are defined and the same staff is notionally assigned to different tasks. Moreover, a large number of declarations presented in the Netherlands relate to imports by importers established in other Member States and checks of these importers can only be carried out by their respective customs authorities. This being said, judging by the data provided by the Member States themselves the Netherlands operates with relatively low customs staff intensity.

99

The Commission carries out inspections of the customs practices and procedures in the Member States to ensure that these practices and procedures comply with EU customs legislation and that that legislation is applied consistently across the Member States. When they occur, the Commission acts vigorously against breaches of the EU customs legislation by launching infringement procedures.

The legislation stipulates that customs controls shall be performed within a common risk management framework, which goes well beyond the controls as it aims to ensure the capacity to detect and mitigate risks in an equivalent way throughout the EU.

99 First indent

In the framework of the customs union, the Commission deals with national customs authorities, to ensure that the financial interests of the Union are protected, that national customs practices comply with EU customs legislation and that EU customs legislation is applied consistently across the Member States.

99 Second indent

The new Union Customs Code applies since 1 May 2016 and streamlines all processes and procedures, limiting the possibility for divergent application and execution of procedures. In addition, the IT systems will be streamlined and in some cases put at Union level, which will contribute to the harmonisation of customs procedures.

101 First indent

As far as the Blue Belt initiative is concerned, the Commission notes that the two measures referred to in the Communication — i.e. the facilitation of the Regular Shipping Services and the establishment of a means to prove the Union status of goods on-board vessels that call also in third country ports — have been put in place through amendments in the customs legislation.

101 Second indent

The Commission agrees that there were benefits brought about by a European single window for maritime transport reporting formalities and notes that evolution towards an EU Maritime Single Window is already ongoing, through:

(a) the launch of the eManifest pilot project with a focus on the 'reporting once' principle for the industry

(b) the development, together with EMSA, of a European Maritime Single Window service through which all ships could report in a standardised manner.

Conclusions and recommendations

102 First indent

The Commissions' policy (Communication: 'ports: an engine for growth') aims at increasing the efficiency of port services and the transparency of public funding. The Ports Regulation agreed on 27 June 2016 will in particular contribute to a better use of port capacity and management of public funding in ports.

Since 2013 the TEN-T Regulation provides for an EU-wide infrastructure planning by establishing a Core and Comprehensive network associated with technical standards and implementation deadlines. This planning exercise is based on an analysis of traffic volumes of EU ports which determines their inclusion in the Core or the Comprehensive networks.

New governance tools have been introduced for the implementation of the TEN-T core network to monitor the TEN-T implementation and to identify the project pipeline that serves the EU policy objectives, among which port development takes a central part.

The 104 core ports in the TEN-T Regulation identified by the co-legislators gave a solid basis for allocating CEF funding to those ports which provide the highest EU added value.

In the framework of regional policy, regarding the programming period 2014-2020, the requirement for long-term infrastructure development is one of the *ex ante* conditionalities in the area of transport (Thematic Objective 7). Amongst other requirements, Member States are obliged to approve Comprehensive Transport Plans, which includes developing long-term strategies for ports.

102 Second indent

The Commission considers that ports infrastructure is planned and designed with a long-term lookout (10 to 20 years) after its completion. Investments in ports cannot therefore be assessed with a relatively short-term perspective.

The Commission considers that after 3 years of the conclusion of the works, it is premature to conclude that investments in underused ports are ineffective and a waste of money.

The ESIF Funds can support only those major investment projects which can clearly demonstrate, by performing a thorough cost–benefit analysis (CBA), that they are desirable from the economic point of view and that they are financially viable. For the majority of these projects, the CBAs were carried out with information or data from before the crisis.

Regarding CEF Funding, the Commission notes that financial support is prioritised towards projects which contribute to port accessibility, multi-modality, hinterland connections rather than capacity increase. Moreover, each project submitted is subject to a cost–benefit analysis (CBA), verified by independent experts, in order to reduce the risk of ineffective investments. These CBAs are supported by estimated traffic volumes.

The financial crisis in 2008/2009, has led to a decrease in demand, which has resulted in underused capacity in almost all transport sectors, not only in the sea transport. This would have affected the needs assessment.

The 2014-2020 Cohesion policy has introduced a performance framework to review each operational programme. Amongst other things, this framework includes the possibility of suspending payments or applying financial corrections, in case of underperformance.

102 Third indent

Regarding newly audited projects, the Commission acknowledges the delays and cost overruns but notes that these risks are inherent in infrastructure investments. Maritime infrastructure ventures are complex and lengthy. Such projects are prone to design and budget changes. In particular, the Commission acknowledges the complexity of administrative authorisation procedures and is examining possible ways to streamline the regulatory environment, for instance through the set-up of a one-stop-shop as recommended by the Court of Auditors.

It considers that the Managing Authorities should be in a position to select from different mature project applications in order to fund those projects that would better achieve the programme's objectives. However, competition between major infrastructure projects is often limited, either because there are not many projects ready to be implemented or because they are not in line with the objectives set in the programme.

102 Fourth indent

On the basis of information received from the Spanish authorities the Commission notes that the used capacity for most of the ports examined by the Court has been increasing. The Commission underlines that the Courts' findings should be interpreted in the context of an adequately long-term perspective (10-20 years) of port investments. Moreover, the effects of the financial crisis in maritime transport should also be taken into consideration.

102 Fifth indent

The Commission notes that port connections with the hinterland are analysed and taken into consideration in the Corridor Works Plans.

Infrastructure investments are building blocks creating and improving a network. Individual projects are therefore always part of a larger global project.

Member States are compelled to make choices in order to ensure that the best use is made of limited EU funds. Investment in ports needs complementary investments in road/motorway and railway networks in order to ensure their effectiveness.

All investments cannot be made at the same time but will have to be prioritised to match the needs the best possible way while taking into account the resources available. Some of these investments are being financed by EU funds or with national funds.

102 Sixth indent

The Commission considers that the consultation arrangements for proposed EIB Loans are in accordance with the procedure set out in Article 19 of the EIB Statute (Article 19 Procedure) which applies to all investments to be financed from the EIB's own resources. The role of the Commission is to provide an opinion on the conformity of the investments to be financed from the EIB's own resources with the relevant EU legislation and policies. The Commission opinion is formulated on the basis of the information provided by the EIB in the framework of the Article 19 Procedure.

102 Seventh indent

Ever since the judgment in *Leipzig Halle* in 2011, which clarified that the funding of infrastructure projects which are to be exploited economically falls under the rules on state aid, the Commission has examined numerous individual cases which were either notified to the Commission or in which competitors lodged a complaint with the Commission. This case practice contributed to ensuring that ports compete on a level playing field.

The Commission underlines the following: if funding of superstructures constitutes state aid in the meaning of Article 107(1) of the Treaty, this does not necessarily prohibit Member States to finance such superstructures. The Commission can declare it compatible with the Treaty. State aid to ports is governed by Article 107(3)(c) of the Treaty.

As regards monitoring, the Commission underlines that the system of state aid control is based on an *ex ante* assessment and loyal cooperation of the Member States. Given the Commission's resources it is not feasible to systematically check all individual decisions *ex post*. However, all decisions are published and allow interested parties to file a complaint in case they consider that breaches have occurred. In this regard the Commission considers that there are sufficient instruments both at national and EU level to safeguard a proper conduct of national authorities as regards the awarding of concessions and allowing unsuccessful bidders to pursue possible irregularities.

Customs procedures at ports have been already facilitated to a considerable extent. Further facilitations of maritime transport reporting formalities expected with the eManifest project, the European Maritime Single Window initiative as well as with the implementation evaluation and revision of the reporting formalities Directive.

103
The Commission considers that the cooperation between ports as well as their successful integration into the respective core network corridors is an important part of the role of the European Coordinators — both for the Coordinator for the MoS programme and for the Coordinators for Core Network Corridors.

104
The selection of 104 core ports was made in order to identify the key traffic generators in the EU but also in order to ensure the appropriate territorial cohesion and accessibility.

The Commission considers that the European ports' policy which aims at achieving financial transparency and more efficient port services contributes to better infrastructure planning.

105
The Commission refers to its ongoing efforts to significantly develop its TENtec database in order to enable it to accommodate very detailed port-related data which is gathered as part of the relevant ongoing studies to update corridor work plans and prepare the Detailed Implementation Plan for MoS. The hinterland connections are included in the studies and work plans for the respective land-based multimodal core network corridors.

Recommendation 1(a)
The Commission accepts the recommendation to monitor the core port capacity and to reassess the development plans of Member States.

The Commission will study the macroeconomic impacts of completion of the TEN-T network.

Recommendation 1(b)
The Commission accepts the recommendation.

Recommendation 1(c)
The Commission accepts the recommendation. A development plan for port sector will be achieved, notably by the Detailed Implementation Plan for MoS programme and the key waterways are included in the respective work plans for core network corridors.

106
The Commission considers that infrastructure investments require long-term planning, as these must meet long-term needs.

Maritime infrastructure developments should therefore be assessed with a relatively long-term perspective. The financial crisis has led to a decrease in demand that resulted in unused capacity in almost all transport sectors.

As indicated in the Commission reply to the second indent of paragraph 102, the 2014-2020 Cohesion policy has introduced a performance framework. This includes the possibility of suspending payments or to apply financial corrections in case of underperformance.

107

The Commission acknowledges the issue of delays in the construction of major infrastructure. As far as ERDF and cohesion fund supported projects are concerned, it has raised it regularly in monitoring committees, bilateral meetings and correspondence with Member States.

The Commission has repeatedly reminded the Member States' authorities to simplify their respective national/regional decision-making procedures and administration of EU funds.

Moreover, the Commission launched a study on identification of key regulatory and administrative obstacles for TEN-T projects (including ports) and identification of possible ways of addressing these issues.

See also Commission reply to the second indent of paragraph 102.

108

On the basis of information received from the Spanish authorities the Commission notes that the used capacity for most of the ports examined by the Court has been increasing. The Commission underlines that the Courts' findings should be interpreted in the context of an adequately long-term perspective (10-20 years) of ports investments. Moreover, the effects of the financial crisis in maritime transport should also be taken into consideration.

109

The Commission is aware of the competitive nature of the port market. In order to reduce the risk of ineffective projects, it encourages port development strategies. Moreover, it safeguards the application of state aid and competition rules.

110

The Commission considers that the consultation arrangements for proposed EIB loans are in accordance with the procedure set out in Article 19 of the EIB Statute which applies to all investments to be financed from the EIB's own resources. The role of the Commission is to provide an opinion on the conformity of the investments financed from the EIB's own resources with all the relevant EU legislation and policies.

The Commission's opinion is formulated on the basis of the information provided by the EIB in the framework of the Article 19 Procedure.

It can issue a negative opinion if the Commission does not receive sufficient information to be able to assess the conformity with EU legislation and policies.

Recommendation 2(a)

The Commission notes that this recommendation is partly addressed to the Member States.

Insofar as it is concerned by it, the Commission accepts to implement this recommendation as described below and considers it partially implemented.

The Commission has launched a study to identify ways of streamlining the administrative procedures for TEN-T projects. The key problems have already been mapped and currently the possible solutions are being analysed. The Commission will specifically examine the possibility to create a 'one-stop-shop' for project promoters to streamline and accelerate the permitting procedures for TEN-T projects, along with other streamlining measures. It will also envisage the design of a single authorisation framework for EU relevant TEN-T projects. As a next step, the Commission intends to carry out an impact assessment in 2017 to consider putting forward a legislative proposal.

The Commission has already announced these initiatives in the Communication of 1 June 2016: Europe investing again Taking stock of the Investment Plan for Europe and next steps[1]: '(…) the Commission will explore the possibility to design a single EU authorisation framework that would directly apply to large projects with a cross-border dimension or major Investment Platforms that involve national co-financing replacing a broad range of authorisation procedures at EU and national level.'

Recommendation 2(b)
The Commission accepts the recommendation but points out that it can only apply financial corrections when there is a breach of the legal conditions.

Recommendation 2(c)
The Commission partially accepts the recommendation. It will reassess the need for further support in these two areas.

However, investments in containers, transhipment and storage are eligible for EU co-funding, if equal and non-discriminatory access of all operators can be guaranteed, also taking into account, where necessary, the dual function of certain infrastructure for transhipment and gateway.

Regarding superstructures not within the public remit, the Commission notes that these are excluded for funding in the framework of CEF, as long they are not linked to environmental and energy policy goals, and of objective 7 (transport) of the ERDF. Superstructures may be allowed under other areas of the ERDF for example as a productive investment.

Recommendation 3
The Commission notes that this recommendation is partly addressed to Members States. Under ESIF, the selection of individual projects is the responsibility of the Member States and the Commission direct responsibility is limited to major projects.

Recommendation 3(a)
The Commission accepts the recommendation as far as CEF is concerned, and in so far as no further congestion of the hinterland connection is created by magnifying the concentration of maritime flows to a few ports.

Recommendation 3(b)

The Commission partially accepts the recommendation with regards to the EU-added value and, where applicable, the private investment component-related conditionalities as explained below. However, regarding the specific cases of maritime accesses to ports (such as dredging), as well ports located in peripheral regions (islands), securing private investment components is not always achievable.

The award criteria for projects applying in the CEF calls for proposals already include the demonstration of 'EU added value[6]' and, where applicable, the need to have the potential of stimulating public and private investment, as referred to part V of Annex I of the CEF Regulation. CEF calls require as of 2015 systematic submission of Cost–Benefit Analyses demonstrating the amount of required EU support and highlighting the project impacts.

Recommendation 4(a)

The Commission accepts the recommendation but points out that changes to the Memorandum of Understanding cannot be imposed unilaterally.

Recommendation 4(b)

The Commission does not accept the recommendation. The Commission services participating in the inter-service consultation of the Article 19 procedure already have the possibility to provide a negative opinion on a project where they have critical remarks. As long as such a negative opinion is maintained by the service concerned, the Commissioner in charge of the economic and financial affairs will not approve a positive opinion through an empowerment procedure.

111

The Commission has been working on providing guidance on the applicable state aid rules in the ports sector with the aim to ensure a level playing field for port in Europe in numerous ways: through the development of case practice, the publication of Analytical Grids for Infrastructure projects and the adoption of the Notice on the Notion of state aid. The Commission is, furthermore, currently working on an extension of the GBER to port infrastructure funding. These measures, taken together, have already provided specific guidance on the applicable state aid rules to the sector and will continue to do so.

6 The EU value added as defined in Article 3(d) of the TEN-T Guidelines 1315/2013 refers to, in addition to the project's value for a Member State alone, leads to significant improvements of transport connections and transport flows between the Member States in terms of **efficiency, sustainability, competitiveness and cohesion** further developed in the TEN-T Guidelines

112

Since 2011 the Commission has dealt with an ever increasing number of cases of potential state aid to ports. In addition, it has been working on providing guidance on the applicable state aid rules in the ports sector through the publication of Analytical Grids for Infrastructure projects and the adoption of the Notice on the Notion of State aid. The Commission is, furthermore, currently working on an extension of the GBER to port infrastructure funding which will provide further guidance. These measures taken together have already provided specific guidance on the applicable state aid rules to the sector and will continue to do so.

The issuance of port specific state aid guidelines, in addition to the measures mentioned above, is, at this stage, not planned.

This question can be revisited once the GBER extension to port infrastructure funding is in place and the Commission has developed sufficient case practice.

113

The Commission considers that its monitoring of Member States' customs control practices is adequate for the purpose of detecting practices which may create unfair competitive advantages. The objective of the Commission's inspections of Member States' customs control practices is to ensure that the financial interests of the Union are protected, that these practices comply with EU customs legislation and that EU customs legislation is applied consistently across the Member States. These controls limit to a large extent unfair competition between Member States based on different quality of controls infringing the EU customs legislation. However the EU customs legislative framework still leaves a margin for competition between Member States.

The Commission furthermore notes that the UCC sets a framework of uniform rules and procedures and should therefore lead to a close alignment of controls.

114

The introduction of the Customs Goods Manifest and the Proof of Union System under the UCC are expected to provide a solution to the issue raised by the Court.

Recommendation 5(a)

The Commission does not accept the recommendation. It has been working on providing guidance on the applicable state aid rules in the ports sector through the development of its case practice, the publication of Analytical Grids for Infrastructure projects and the adoption of the Notice on the Notion of State aid. The Commission is, furthermore, currently working on an extension of the GBER to port infrastructure funding, which will provide further guidance. Issuing port specific state aid guidelines, in addition to the measures mentioned above, is, at this stage, not planned.

In the view of the Commission, the issue can be re-examined once the GBER extension is in place and sufficient case practice has been developed.

Recommendation 5(b)
The Commission accepts the recommendation and will strive to continue to ensure a consistent analysis of user-specific port superstructures in its assessment of individual state aid cases. The Commission, furthermore, intends to provide further guidance as regards user-specific port superstructures in the GBER.

Recommendation 5(c)
The Commission accepts the recommendation.

It already increased the number of *ex officio* investigations. Following the adoption of the GBER further resources will be available for such investigations. The adoption of the GBER is currently foreseen for the first half of 2017.

Recommendation 6
The Commission notes that this recommendation is addressed to the Member States.

Member States are already obliged, under Article 108 TFEU, to notify systematically any public financial support for port infrastructure projects which constitute an economic activity. The Commission observes that it does not have any competence to demand that Member States inform it of any public financial support which does not constitute state aid in the meaning of Article 107 TFEU.

Recommendation 7(a)
The Commission does not accept the recommendation as it would introduce an additional reporting requirement and thus increase the administrative burden for EU Member States administrations without leading to proportionate benefits.

Recommendation 7(b)
The Commission accepts the recommendation.

The Commission acknowledges that further simplification efforts are needed to reduce administrative burden in the field of maritime transport.

It notes that actions are already ongoing on maritime transport reporting formalities through the launch of the e-Manifest pilot project with a focus on the ‘reporting once’ principle for the industry as well as through the development, together with EMSA, of a European Maritime Single Window service through which all ships could report in a standardised manner.

Furthermore, the Commission is currently conducting an evaluation of the directive on maritime reporting formalities, which might possibly lead to a revision of this directive.

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Event	Date
Adoption of the Audit Planning Memorandum/Start of audit	18.12.2014
Official sending of draft report to Commission (or other auditee)	25.5.2016
Adoption of the final report after the adversarial procedure	20.7.2016
Commission's (or other auditee's) official replies received in all languages	31.8.2016

Seaports are a key part of the EU's trade network. Between 2000 and 2013, the EU invested 6.8 billion euros in ports. We found that the port development strategies put in place by the Member States and the Commission did not provide enough information to allow effective capacity planning to be carried out. This had led to EU co-financed investments in port infrastructure being ineffective and unsustainable, with a high risk of around 400 million euros invested being wasted. Road and rail connections to port hinterlands were often missing or inadequate, meaning that further public funding will be needed to make the initial port investments work well. We also found that the Commission had not taken the necessary action in the area of state aid and customs procedures to allow ports to compete on a level playing field.

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