



Bruksela, dnia 23 maja 2013 r.

KANCELARIA SENATU

Przedstawiciel Kancelarii Senatu
przy Unii Europejskiej

Sprawozdanie nr 48/2013

Sprawozdanie nt. propozycji Komisji Europejskiej ws. unowocześnienia 300 głównych portów morskich

Bruksela, 23 maja 2013 r.

1. Informacje podstawowe

Komisja Europejska rozpoczęła w dniu 23 maja br. nową inicjatywę w celu usprawnienia operacji portowych oraz połączeń dowozowych w 319 kluczowych portach morskich wzdłuż wybrzeży Europy. Proponowane wytyczne i zmiany prawne pomogą operatorom portów w polepszeniu jakości usług i modernizacji urządzeń portowych oraz zwiększą ich niezależność finansową.

74 proc. towarów przybywa do Europy lub opuszcza Europę drogą morską, przy czym jedna piąta tych towarów przechodzi obecnie jedynie przez trzy porty: Rotterdam, Hamburg i Antwerpię. Ten brak równowagi w zakresie efektywności portów powoduje zatory komunikacyjne i jest źródłem dodatkowych kosztów dla wysyłających, przewoźników i konsumentów. Proponowane zmiany mogłyby przynieść gospodarce europejskiej do 10 mld euro oszczędności do 2030 r. i przyczynić się do rozwoju morskich połączeń krótkodystansowych.

Wiceprzewodniczący Komisji Europejskiej Siim Kallas, który jest komisarzem odpowiedzialnym za mobilność i transport, stwierdził: „Nasze porty morskie stanowią bardzo ważne punkty łączące europejskie korytarze transportowe z resztą świata. Już obecnie niektóre z naszych portów należą do światowej czołówki. Musimy zadbać o to, by w niej pozostały. Stoją przed nami jednak poważne wyzwania w postaci zatorów komunikacyjnych, wzrostu natężenia ruchu i inwestycji. Więcej naszych portów musi osiągnąć ten wysoki

poziom. Przedstawione wnioski w opinii Komisji Europejskiej sprawią, że europejskie usługi portowe wejdą w XXI wiek, przyczynią się do przyciągnięcia inwestycji i tworzenia nowych miejsc pracy tam, gdzie są one najbardziej potrzebne.”

- **Zwiększenie efektywności portów**

Komisja proponuje bardziej przejrzyste i otwarte procedury wyznaczania podmiotów świadczących usługi portowe. Ustanowione zostaną przepisy zapobiegające ewentualnym nadużyciom cenowym ze strony operatorów posiadających wyłączność praw. Aby zwiększyć zorientowanie na klienta, we wniosku wprowadza się instytucję komitetu doradczego użytkowników portu. Szczegółowe zasady z tym związane pozostawiono do ustalenia na szczeblu lokalnym, dając w ten sposób lokalnym społecznościom portowym możliwość czerpania korzyści z lepszej koordynacji i zdrowszego otoczenia biznesowego.

W celu dalszej poprawy efektywności portów Komisja przedstawi późną wiosną wnioski w sprawie ograniczenia biurokracji i formalności administracyjnych w portach (tzw. wnioski „Niebieskiego pasa”).

- **Poprawa połączeń z zapleczem lądowym**

Środki UE w ramach instrumentu "Łącząc Europę" będą odtąd przeznaczane głównie na finansowanie projektów określonych w tzw. planach priorytetowego finansowania korytarzy TEN-T oraz połączenia portów z siecią kolejową, śródlądowymi drogami wodnymi oraz transportem drogowym. Zachęcać się będzie porty do aktywnego współuczestnictwa w tych działaniach, np. poprzez dostarczanie informacji o przepływach ruchu.

- **Inwestycje – elastyczne ramy finansowe o charakterze biznesowym**

Wniosek daje portom większą swobodę w zakresie pobierania opłat za korzystanie z infrastruktury i zwiększa przejrzystość procedury ustalania takich opłat i wykorzystywania finansowania ze środków publicznych. Nie ulega wątpliwości, że nikt nie znajduje się w lepszej pozycji, by móc zrozumieć potrzeby użytkowników i ustalić poziom opłat, niż właśnie władze portowe. Zwiększenie przejrzystości umożliwi jednocześnie korzystanie ze środków publicznych bez nadmiernego zakłócania konkurencji i ułatwi przyciąganie prywatnych inwestorów. Porty będą mieć również możliwość zmniejszenia opłat dla statków o lepszej efektywności środowiskowej.

- **Dialog społeczny**

W czerwcu bieżącego roku Komisja stworzy komitet ds. dialogu społecznego w portach, by umożliwić pracownikom i pracodawcom omawianie i uzgadnianie kwestii związanych z pracą w porcie. Komisja zapewni temu komitetowi wsparcie techniczne i administracyjne w jego pracach, a w 2016 r. dokona oceny postępów.

Komisja po raz pierwszy tworzy przepisy sektorowe w tej dziedzinie, będąc świadoma szczególnych wyzwań, przed którymi stoją porty. Dotychczas porty objęte były ogólnymi przepisami prawa UE w dziedzinie swobody przedsiębiorczości i zasad konkurencji.

W Europie jest łącznie 1200 portów morskich. Grupą docelową omawianego tu wniosku jest 319 kluczowych portów europejskich, które łącznie mogą stworzyć prawdziwą sieć portów europejskich zdolną do wspierania europejskiego rynku wewnętrznego. Tym 319 portom nadano już znaczenie priorytetowe we wnioskach Komisji dotyczących TEN-T (transeuropejskiej sieci transportowej) — 83 porty należą do sieci bazowej, a 236 do sieci kompleksowej.

- **Kolejne kroki**

Inicjatywa ta jest jednym z podstawowych działań w zakresie transportu morskiego ogłoszonych w Akcie o jednolitym rynku II, przyjętym przez Komisję w październiku 2012 r. Uzupełnia ona inne inicjatywy Komisji, takie jak przyszła dyrektywa w sprawie udzielania koncesji (która będzie miała zastosowanie do koncesji portowych w zakresie przeładunku towarów i terminali pasażerskich), ustanawiająca wspólne procedury i zapewniająca większą przejrzystość w celu zapewnienia niedyskryminującej procedury przyznawania koncesji.

Inicjatywa ta obejmuje komunikat stanowiący przegląd europejskiej polityki w zakresie portów i zawiera zapowiedź ośmiu działań Komisji oraz ukierunkowanego wniosku ustawodawczego Parlamentu Europejskiego i Rady, którego celem będzie ustanowienie nowych przepisów prawnych koniecznych do osiągnięcia założeń polityki i wyznaczonych celów.

Wniosek musi zostać zatwierdzony przez Parlament Europejski i państwa członkowskie przed jego przyjęciem w ramach zwykłej procedury ustawodawczej.

2. Informacje szczegółowe - Europejskie porty morskie 2030: wyzwania na przyszłość

- **Znaczenie portów – podstawowe informacje**

Porty mają kluczowe znaczenie dla europejskiego sektora transportu, konkurencyjności Europy, a także prezentują ogromny potencjał tworzenia nowych miejsc pracy oraz potencjał inwestycyjny.

Europejskie porty są bramami prowadzącymi do naszego kontynentu. Przechodzi przez nie 74 proc. towarów przywożonych spoza UE. Mają one również duże znaczenia dla handlu wewnątrz europejskiego: corocznie przewozi się przez nie 37 proc. wewnątrz europejskiego ruchu towarowego oraz 385 mln pasażerów.

Na linii brzegowej UE o długości ok. 70 tys. km działa ponad 1200 portów handlowych. Zagęszczenie portów w Europie jest jednym z największych na świecie.

W 2011 r. przez europejskie porty tranzytem przetransportowanych zostało około 3,7 mld ton towarów (ponad 60 tys. zawinięć statków handlowych do portów). 70 proc. ruchu transportowego stanowiły masowce, 18 proc. kontenerowce, 7 proc. statki typu ro-ro, pozostała część przypadła zaś na drobnicowce.

Sektor portowy UE ma duże znaczenie gospodarcze w kwestii zatrudnienia i aktywności sektorowej (wpływ bezpośredni), a także dla kolejnych ogniw łańcucha dostaw (wpływ pośredni) i w szerszym sensie na gospodarkę UE (wpływ indukowany). W portach rozwijają się różne obszary przemysłu – petrochemiczny, hutniczy, motoryzacyjny, energetyczny oraz transportowy. Stanowią one także centrum działalności gospodarczej większych klastrów morskich, obejmujących stocznie, producentów wyposażenia statków, dźwigów i wyposażenia terminali, przedsiębiorstwa specjalizujące się w ratownictwie morskim, wodnych robotach budowlanych, pogłębianiu, bazy wojskowe itp.

W niektórych krajach, np. w Holandii, całkowity udział portów w PKB osiąga nawet 3 proc. całkowitej działalności gospodarczej.

Działalność portów bezpośrednio przyczynia się do wzrostu zatrudnienia, inwestycji bezpośrednich i wzrostu PKB. W 22 państwach nadmorskich UE 2 200 operatorów portowych zatrudnia obecnie ok. 110 tys. pracowników. Znacznie większa liczba

pracowników obsługuje przemysł portowy w zakresie konserwacji i obsługi infrastruktury transportu morskiego, eksploatacji i obsługi floty, transportu lądowego, logistyki, obsługi ładunku (np. spedycja frachtu czy pośrednictwo celne) itp. Porty zapewniają ponad 1,5 mln bezpośrednio związanych z nimi miejsc pracy¹. Jeśli dodać do tego miejsca pracy pośrednio powiązane z sektorem portowym, liczba ta wzrasta do 3 mln w 22 państwach nadmorskich UE.

Koszty i jakość usług portowych wywierają istotny wpływ na europejskie przedsiębiorstwa. Koszty portowe mogą stanowić istotną część całkowitych kosztów łańcucha logistycznego. Koszty przeładunku, opłaty portowe i koszty portowych usług morskich mogą stanowić 40 proc.–60 proc. całości kosztów logistycznych w przypadku przedsiębiorstw korzystających z transportu morskiego bliskiego zasięgu dla swoich towarów.

Przed europejskimi portami stoją jednak trzy najważniejsze wyzwania.

Prognozuje się, że do 2030 r. ilość ładunku obsługiwanego przez porty UE wzrośnie o połowę. Dzięki temu pojawią się możliwości wzrostu gospodarczego i tworzenia nowych miejsc pracy: Komisja szacuje, że do roku 2030 w portach powstanie od 110 tys. do 165 tys. nowych miejsc pracy. Europejskie porty wymagają jednak dostosowania do obsługi ruchu o zwiększonej intensywności.

Zmienia się charakter handlu. Kontenerowce nowej generacji mogą pomieścić do 18 tys. kontenerów. Ustawione jeden za drugim TIR-y przewożące taką samą liczbę kontenerów uformowałyby sznur ciągnący się od Rotterdamu do Paryża.

Pomiędzy europejskimi portami istnieją znaczne różnice wydajności. W chwili obecnej trzy europejskie porty o największej wydajności – Antwerpia, Hamburg i Rotterdam, obsługują jedną piątą wszystkich towarów, które docierają do Europy drogą morską. Luka wydajności prowadzi do znacznych niewydolności – wydłużenia szlaków, istotnych zmian w ruchu, wydłużenia czasu transportu morskiego i lądowego, a także zwiększonej emisji zanieczyszczeń pochodzących z transportu oraz zwiększenia intensywności ruchu, które mają szkodliwy wpływ na obywateli UE i gospodarkę. Jeśli nie zostaną podjęte żadne działania, sytuacja będzie pogarszać się wraz ze wzrostem intensywności ruchu.

- **Dlaczego 319 portów morskich UE?**

¹ <http://pprism.espo.be/>

Komisja sporządziła wykaz 319 europejskich portów morskich o kluczowym znaczeniu dla wydajnego funkcjonowania rynku wewnętrznego oraz europejskiej gospodarki² (patrz wytyczne TEN-T), z których 83 zostały zaklasyfikowane jako „porty sieci bazowej”³. Dokonany przez Komisję przegląd skupia się na wspomnianych 319 portach, które stanowią podstawę funkcjonowania europejskiej sieci portów i przez które przepływa 96 proc. towarów i 93 proc. pasażerów tranzytowych podróżujących przez porty UE.

- **Główne wyzwania stojące przed europejskimi portami**

⇒ **Przewidywany wysoki wzrost**

Nawet przy założeniach dotyczących umiarkowanego wzrostu gospodarczego, ilość towarów obsługiwanych przez porty ma wzrosnąć o 50 proc. do roku 2030, a w przypadku transportu kontenerowego nawet bardziej.

Aby sprostać wyzwaniom przewidywanego wzrostu już dziś należy podjąć odpowiednie decyzje, aby przyniosły one efekty za 5–15 lat. Po pierwsze, niezbędne jest opracowanie odpowiednich ram regulacyjnych, aby przyciągnąć inwestorów i przewidzieć czas niezbędny dla wykonania odpowiednich prac projektowych i budowlanych. Realizacja dużych projektów infrastrukturalnych trwa zwykle 15 lat.

Jeśli UE nie podejmie dziś odpowiednich działań, wzrost gospodarczy zagrożony będzie przez ryzyko powstania zatorów i bardzo wysokie koszty zewnętrzne, dotyczące w szczególności miast i regionów portowych oraz terenów do nich przyległych.

⇒ **Różnice wydajności w Europie wynikające z przyczyn strukturalnych**

Wydajność europejskich portów jest bardzo zróżnicowana: nie wszystkie porty UE działają z taką samą wydajnością, przy czym w ostatnich latach powiększa się luka między portami, które przyjęły nowe wymagania logistyczne i ekonomiczne oraz tymi, które tego nie zrobiły.

² Patrz wytyczne TEN-T: http://ec.europa.eu/transport/themes/infrastructure/revision-t_en.htm

³ Sieć TEN-T obejmuje dwie warstwy: 1) sieć kompleksowa obejmie całą UE i zapewni dostępność wszystkich jej regionów do 2030 r. oraz 2) sieć bazowa zostanie rozwinięta przy pomocy sieci kompleksowej i obejmie priorytetowo traktowane najważniejsze węzły TEN-T, które mają zostać ukończone do roku 2050. Szczegółowe kryteria wyboru portów TEN-T znajdują się we wniosku TEN-T (COM (2011) 650 final/2). Ostateczna liczba portów TEN-T zależeć będzie od ostatecznego wyniku trwającej zwykłej procedury ustawodawczej.

Wiele europejskich portów funkcjonuje doskonale i oferuje wysokiej klasy usługi. O niezawodności danego systemu decyduje jednak jego najsłabsze ogniwo: spadek wydajności niektórych portów lub ich problemy strukturalne zagrażają funkcjonowaniu całej sieci europejskiego transportu oraz gospodarce.

Luka wydajności prowadzi do istotnych zmian w ruchu, wydłużenia tras transportu morskiego i lądowego, a także zwiększonej emisji zanieczyszczeń pochodzących z transportu oraz zwiększenia intensywności ruchu, które ma szkodliwy wpływ na obywateli UE i gospodarkę.

Wywiera ona także negatywny wpływ na możliwości gospodarcze portów osiągających dobre wyniki, które nie mogą rozwinąć sieci połączeń żeglugowych bliskiego zasięgu (ani powiązań z ruchem na innych trasach) do regionów, których porty charakteryzują się niską wydajnością.

Luka ta utrudnia starania UE i państw członkowskich zmierzające do rozwoju żeglugi bliskiego zasięgu jako rzeczywistej alternatywy dla transportu lądowego na gęsto zaludnionych obszarach.

Podsumowując, istniejące różnice zagrażają wydajności i zrównoważonemu charakterowi transeuropejskiej sieci transportowej, jak również konkurencyjności europejskiej gospodarki jako całości.

⇒ **Zmieniający się charakter transportu morskiego**

Porty muszą dostosować się do zmieniających się potrzeb przemysłu:

Zwiększa się wielkość oraz złożoność floty: pojawiają się kontenerowce ULCS, a także nowe typy promów ro-ro i gazowców. Większe statki wymagają pełnych mocy przerobowych ze względu na większe ładunki i liczbę pasażerów. Przykładem może być należący do CMA statek „Marco Polo”, pływający od listopada 2012 r. o ładowności 16 tys. kontenerów i długości 396 m. Firma Maersk na rok 2015 zamówiła 20 statków o ładowności 18 tys. kontenerów. Ładunek ten odpowiadałby ładunkowi pociągu o długości 280 km (jest to odległość pomiędzy Rotterdamem a Düsseldorfem).

Użycie coraz większych statków do transportu morskiego bliskiego zasięgu i na liniach dowozowych wiąże się z nowymi potrzebami wydajności energetycznej, zapotrzebowaniem

na alternatywne paliwa bunkrowe oraz oddziaływaniem na środowisko (LNG, wykorzystanie przybrzeżnych stacji zasilania energetycznego⁴).

Ostatnie tendencje w logistyce i systemach dystrybucji przyciągają do portów więcej usług stanowiących wartość dodaną (odpowiednio do zasad konkurencji panujących w porcie i systemów pobierania opłat).

Zmienia się także charakter handlu energią: odejście od ropy i jej produktów rafinowanych w stronę gazu; Zapotrzebowanie na znaczną ilość instalacji gazyfikacji w portach; Potencjalna wielkość transportowanej i przechowywanej suchej biomasy i CO₂; Wykorzystanie przybrzeżnych instalacji zasilania elektrycznego.

- **Wnioski dotyczące nowych przepisów**

Konieczna jest pomoc w celu modernizacji zaplecza usługowego portów, ich lepszego połączenia i zapewnić najwyższy standard świadczonych przez nie usług. Oznacza to, że porty, które obecnie pozostają w tyle, powinny zostać dostosowane do zmian zachodzących w pozostałych portach. Wymagać to będzie zmiany mentalności oraz uczenia się od dobrze działających portów.

Komisja oszacowała, że inicjatywa ta do 2030 r. pozwoli zaoszczędzić gospodarce UE do 10 mld euro oraz obniżyć koszty o niemal 7 proc..

⇒ **Wydajniejsze porty**

Komisja zwraca się z wnioskiem utworzenia nowych, przejrzystych i otwartych procedur wyboru dostawców usług portowych. Wprowadzone zostaną także przepisy zapobiegające potencjalnym nadużyciom cenowym ze strony operatorów działających na zasadach wyłączności. Zapewnienie konkurencyjnego i otwartego środowiska w odniesieniu do usług portowych oraz wprowadzenie większej presji konkurencyjnej w portach, w których dotychczas jej nie było, zmusi operatorów do dostarczania lepszych i niezawodnych usług. Wyzwanie to zostało także określone jako jeden z priorytetów Aktu o jednolitym rynku II. We wniosku dotyczącym portów przyjęto zasadę swobody świadczenia usług bez

⁴ Wykorzystanie przybrzeżnych instalacji zasilania elektrycznego (ang. cold ironing): polega na podłączeniu statków do układu zasilania, dzięki czemu nie muszą używać swoich generatorów.

dyskryminacji, co dostosowuje sektor portowy do pozostałych rodzajów transportu oraz zasad funkcjonowania rynku wewnętrznego.

Dla większego zorientowania na klienta, wniosek zawiera propozycję powołania komitetu doradczego użytkowników portów. Szczegółowe decyzje uzależnione będą od lokalnych warunków, dzięki czemu miejscowe społeczności portowe będą czerpać korzyści z usprawnionej koordynacji i lepszych warunków prowadzenia działalności gospodarczej. Jednocześnie społeczność portowa jako całość w większym stopniu uwzględni potrzeby klientów i uzyska dostęp do narzędzi pozwalających na dostarczanie lepszych usług zarówno dla statków zawijających do portu jak i użytkowników portu z sąsiednich regionów.

Wniosek nie zawiera konkretnych przepisów obsługi towaru i usług pasażerskich. Procedury dotyczące tych zagadnień określone zostały w dyrektywie w sprawie udzielania koncesji (patrz działanie 3). Dostawcy tych usług również skorzystają z bardziej przejrzystych zasad prowadzenia działalności gospodarczej, a także będą mogli aktywnie uczestniczyć w ulepszaniu funkcjonowania portu.

⇒ **Lepsze połączenie z lądem**

Rozwój europejskich portów i dostosowanie się do zmian będzie możliwe tylko przy wydajniejszym połączeniu z większą siecią transportową.

W nowych wytycznych TEN-T określono sieć 319 portów, które zostały uznane za niezbędne dla prawidłowego działania rynku wewnętrznego i europejskiej gospodarki (83 porty należące do sieci bazowej TEN-T i 239 portów należących do sieci ogólnej). Te 319 portów ma kluczowe znaczenie dla dalszego udoskonalania europejskiego transportu i wdrażania nowoczesnych operacji logistycznych. Ze względu na istnienie węzłów intermodalnych na obu krańcach autostrad morskich niezbędny jest także rozwój transportu morskiego bliskiego zasięgu, jako alternatywy dla transportu lądowego w niektórych regionach, szczególnie na wybrzeżu Morza Śródziemnego. Komisja szacuje, że inicjatywa ta podniesie wydajność transportu morskiego bliskiego zasięgu o 4 do 8 proc. i przyczyni się do stworzenia wielu nowych miejsc pracy.

Wspomniane porty TEN-T wytworzą wartość dodaną na poziomie UE, a ich działanie uzupełnią porty lokalne i regionalne.

⇒ **Usprawnione ramy inwestycyjne**

Wniosek daje portom większą swobodę w zakresie pobierania opłat i zwiększa potrzebę przejrzystości finansowania publicznego.

Wniosek zapewni większą niezależność władz portowych, szczególnie w zakresie ustalania wysokości opłat oraz dystrybucji zasobów. Przyznanie władzom portowym większej swobody w zakresie wyznaczania wysokości oraz pobierania opłat za korzystanie z infrastruktury pozwoli ulepszyć ofertę operacji w danym porcie.

Wniosek zakłada ponadto większą elastyczność w zakresie efektywności środowiskowej portów. W najbliższych latach zostanie ona zwiększona poprzez propagowanie czystych technologii zarówno w odniesieniu do statków jak i infrastruktury portowej. Władze portowe muszą być odpowiednio przygotowane do zmierzenia się z nowymi wyzwaniami.

Większa swoboda zarządzania portów zrównoważona zostanie przez nadzór niezależnej instytucji, która czuwać będzie nad uczciwą konkurencją i koordynacją rozwoju portów na poziomie krajowym i europejskim.

Wniosek zwiększa potrzebę przejrzystości korzystania z finansowania publicznego. Pozwoli to na jasne określenie, na co przeznaczane są publiczne pieniądze i pomoże zapobiec zakłóceniom konkurencji. Szczegółowe przepisy dotyczące przejrzystości pozwolą na ściślejszą kontrolę stosowanych obecnie praktyk. Przyciągnie to prywatnych inwestorów, którzy potrzebują pewności prawnej i długoterminowej stabilności. W czasach malejących zasobów publicznych, niezbędne są dodatkowe inwestycje prywatne.

⇒ **Dialog społeczny: gwarancja dobrych warunków pracy**

Porty nie mogą funkcjonować bez odpowiednio przeszkolonych i wykwalifikowanych pracowników. Komisja szacuje, że prognozowany wzrost aktywności portów może zaowocować stworzeniem do 2030 r. ok. 70 tys. nowych miejsc pracy bezpośrednio z nim związanych⁵. Nowoczesne usługi portowe oraz stabilne otoczenie muszą opierać się na nowoczesnej organizacji pracy i ochronie socjalnej.

W czerwcu bieżącego roku Komisja powoła Komitet ds. Dialogu Społecznego w portach, by umożliwić pracownikom i pracodawcom omawianie i uzgadnianie kwestii związanych z

⁵ Liczba ta jest jeszcze wyższa, jeśli weźmie się pod uwagę pośrednie i indukowane miejsca pracy.

pracą. Komisja zapewni temu komitetowi wsparcie techniczne i administracyjne w jego pracach, a w 2016 r. dokona oceny postępów.

Prace komitetu na początku skupią się na zagadnieniach dotyczących zdrowia, bezpieczeństwa, szkolenia i edukacji. Wypracowane porozumienia zostaną następnie włączone do ustawodawstwa.

- **Proponowany przez Komisję plan działania**

Nowy wniosek legislacyjny w sprawie portów stanowi część zaproponowanego przez Komisję szerszego planu działania. W efekcie długiego procesu konsultacyjnego Komisja opracowała inicjatywę obejmującą wniosek legislacyjny zawierający konkretne środki, którego przyjęcie zależy od Parlamentu Europejskiego i Rady, a także osiem dodatkowych działań, które Komisja powinna podjąć w nadchodzących latach, aby zmierzyć się z największymi wyzwaniami, przed którymi stają dziś europejskie porty:

⇒ **Działanie 1**

Użycie przyszłych korytarzy wspomnianych w nowych wytycznych rozwoju sieci TEN-T dla określenia inwestycji priorytetowych w ramach instrumentu „Łącząc Europę” dla połączenia portów z siecią kolejową, śródlądowymi drogami wodnymi i lądowymi oraz dla wsparcia portów w dostarczaniu informacji o przepływie ruchu pozwalających na sprawniejszą organizację logistyki intermodalnej.

⇒ **Działanie 2**

Wzmocnienie stopnia koordynacji projektów transportowych finansowanych z funduszy strukturalnych oraz Funduszu Spójności z TEN-T, ze szczególnym uwzględnieniem przedsięwzięć z zakresu dostępu do portów i połączeń śródlądowych. Podobne starania na rzecz koordynacji inwestycji podjęte zostaną także w stosunku do innych źródeł finansowania UE, takich jak pożyczki z EBC i innych instrumentów pożyczkowych UE.

⇒ **Działanie 3**

Kontrola prawidłowego stosowania przyszłej dyrektywy w sprawie koncesji i zamówień publicznych w sektorze portowym. W przypadku zamówień nieobjętych niniejszymi

dyrektywami, kontrolą objęte zostanie prawidłowe stosowanie w sektorze portowym zasad równego traktowania i przejrzystości zawartych w Traktacie, zgodnie z interpretacją Trybunału.

⇒ **Działanie 4**

Wsparcie dla uproszczenia procedur administracyjnych w portach, które pozwoli na praktyczną realizację następujących inicjatyw:

„Niebieski pas”, polegającej na uproszczeniu procedur celnych w portach;

zharmonizowane i spójne wdrożenie systemu krajowych punktów kompleksowej obsługi;

„e-maritime” (korzystanie z informacji w formie elektronicznej dla zmniejszenia obciążenia administracyjnego i prowadzenia działalności gospodarczej); oraz

„e-Freight”, inicjatywy, której celem jest ułatwienie wymiany informacji w ramach multimodalnych łańcuchów logistycznych, a także poprawa wydajności portów jako ważnych platform multimodalnych.

⇒ **Działanie 5**

Wyjaśnienie kwestii stosowania unijnych zasad pomocy państwa w odniesieniu do sektora portowego: Komisja jest obecnie zaangażowana w modernizację swoich zasad pomocy państwa we wszystkich sektorach gospodarki. Do końca 2013 r. Komisja doprecyzuje pojęcie pomocy w odniesieniu do finansowania infrastruktury, szczególnie w świetle rozwijającego się orzecznictwa Trybunału Sprawiedliwości.

⇒ **Działanie 6**

Dostosowanie się do zmian omówione, w miarę potrzeb, z partnerami społecznymi w ramach europejskiego dialogu społecznego: partnerzy społeczni UE uzgodnili już regulamin i otwarty program współpracy i oczekują oficjalnego powołania komitetu dnia 19 czerwca 2013 r. Komisja zapewni temu komitetowi wsparcie w jego pracach, a w 2016 r. dokona oceny postępów.

⇒ **Działanie 7**

Promocja innowacyjności, monitorowanie wyników oraz analiza i omówienie zapotrzebowania na zasoby ludzkie, w tym wyzwań dotyczących zdrowia i bezpieczeństwa, a także szkolenia i kwalifikacji dotyczące portów UE. W ramach siódmego programu ramowego w zakresie badań i rozwoju technologicznego w dziedzinie transportu Komisja rozpocznie do końca 2013 r. realizację dwóch ogólnoeuropejskich projektów dotyczących ww. kwestii.

⇒ **Działanie 8**

Wspieranie spójniejszego stosowania zróżnicowania opłat za korzystanie z infrastruktury portowej w zależności od aspektów środowiskowych: Komisja przedstawi propozycje zasad uzależniania opłat od aspektów środowiskowych i do 2015 r. promować będzie wymianę dobrych praktyk.

Opracowała:
dr Magdalena Skulimowska⁶

Załączniki:

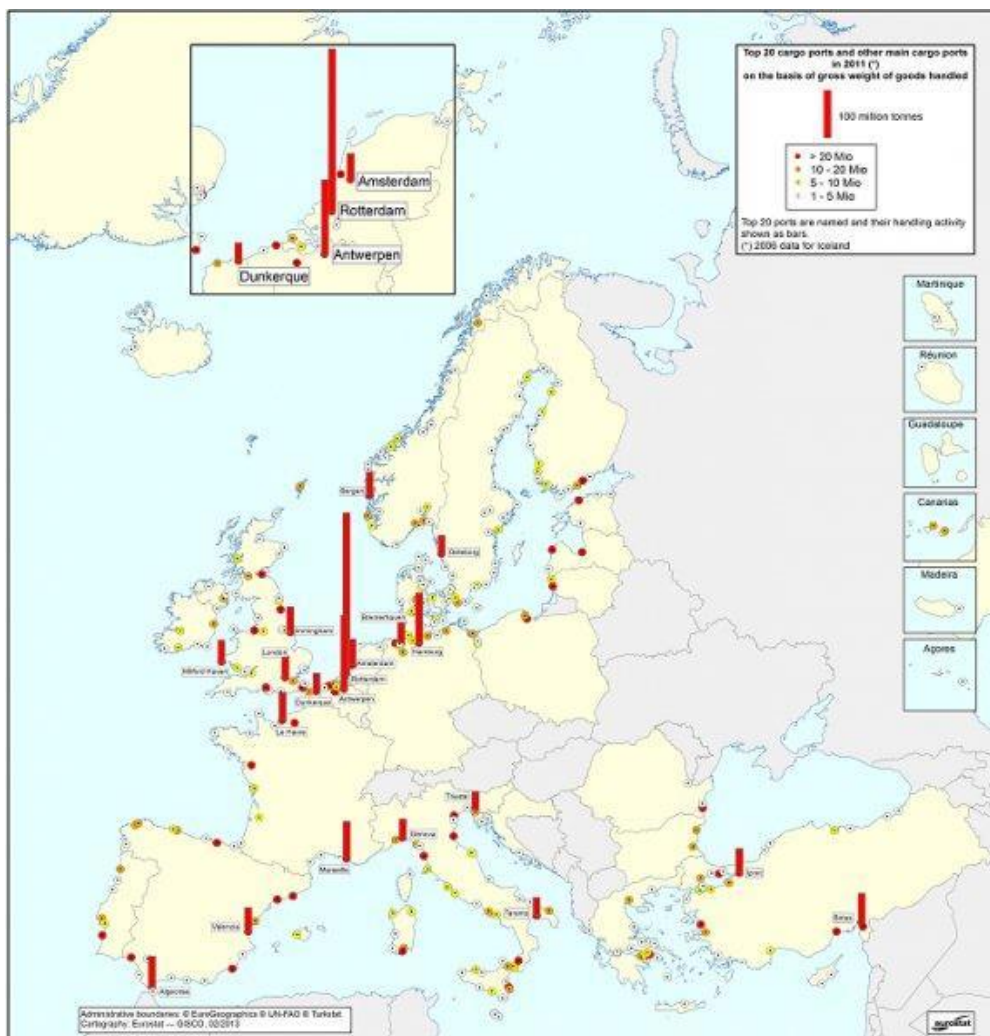
Tabela 1 - 20 najważniejszych europejskich portów wg ton obsługiwanego ładunku (2011)

	20 najważniejszych portów przeladunkowych UE	Tony obsługiwanego ładunku w mln ton (2011)
1	Rotterdam	370,3
2	Antwerpia	168,5
3	Hamburg	114,4
4	Marsylia	84,5
5	Algeciras	68,8
6	Hawr	63,4
7	Amsterdam	59,6
8	Immingham	57,2
9	Bremerhaven	55,9

⁶ Na podstawie informacji Komisji Europejskiej.

10	Walencja	54,2
11	Londyn	48,8
12	Milford Haven	48,7
13	Genua	42,4
14	Triest	41,8
15	Göteborg	41,3
16	Taranto	41,2
17	Dunkierka	40,8
18	Southampton	37,9
19	Talin	36,0
20	Tees i Hartlepool	35,2

Wykres 1: 20 najważniejszych europejskich portów wg ton obsługiwanego ładunku (2011)



Źródło: Dane Eurostatu

Więcej informacji:

<http://ec.europa.eu/transport/>

[Lista 319 kluczowych portów UE uporządkowana wg krajów](#)



Brussels, 23.5.2013
COM(2013) 296 final

2013/0157 (COD)

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**

(Text with EEA relevance)

{SWD(2013) 181 final}

{SWD(2013) 182 final}

{SWD(2013) 183 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1 Background

Europe is one of the most dense port regions worldwide. At the same time, the port sector is very heterogeneous and characterised by a wide diversity in types and organisation. This Regulation respects this diversity and does not seek to impose a uniform model for ports.

Over 1.200 commercial seaports operate along some 70.000 kilometres of the Union's coasts. In 2011, around 3.7 billion tonnes of cargo (more than 60 000 port calls of merchant ships) transited through European ports.

While the EU is highly dependent on its ports for its trade with the rest of the world, its ports also play a key role for its own internal market. Thus short sea shipping represents 60% of the tons handled in EU ports. Seaports are key nodal points of the EU intermodal transport chains using short sea shipping as an alternative to saturated land transport routes and as a way to connect peripheral or island areas.

In terms of passengers transport, EU ports handled 385 million maritime passengers in 2011.

Port activities contribute directly to employment, inward investment and GDP growth. 2,200 port operators currently employ around 110,000 port dockers. In total, ports represent up to 3 million (direct and indirect) jobs in the 22 maritime Member States and are a major source of tax revenues for local, regional or national governments.

96% of all freight and 93% of all passengers through the EU ports transit through the 319 seaports identified in the Commission's proposal for Guidelines on the trans-European transport network (TEN-T)¹.

1.2 Challenges

While the need to develop hinterland connections is well identified as a key challenge and already addressed through the TEN-T policy, other key challenges for TEN-T ports remain unresolved. First, there is the fact that today not all TEN-T ports are offering the same high-level service. Second, the current port governance framework is not in all cases attractive enough for investors. This together relates to five specific challenges:

1.2.1 Sub-optimal port services and operations in some TEN-T seaports

Efficient port services are crucial for the performance of the TEN-T seaports. The Commission, together with the sector, has identified three issues that may prevent port services from being organised in an optimal way: (1) many of the port services are subject to a weak competitive pressure due to market access restrictions; (2) monopolistic or oligopolistic, although justified in a number of situations, may lead to market abuses and (3) in some ports users are faced with too much administrative burden due to a lack of coordination within ports.

1.2.2 Port governance frameworks are not attractive enough for investments in all TEN-T seaports

The investments required to adapt the port capacities to changing needs are only possible only in a stable policy and regulatory framework that will reduce economic uncertainties and ensure a level playing field. This however does not seem to be the case in all TEN-T ports.

¹ COM(2011) 650 final/2. The final number of TEN-T ports will depend on the outcome of the on-going legislative procedure.

Several factors explain it: a) the legal uncertainties created by the market restrictions described above and b) the need for better infrastructure planning which can be tackled through stricter TEN-T rules.

But two other fundamental issues explain this current and overall unattractive investment climate in several TEN-T ports: (4) unclear financial relations between public authorities, port authorities and port services providers and (5) the weak autonomy of ports to define infrastructure charges and non-transparent links with the costs related to access infrastructure of ports.

1.3 Objective

The objective is to contribute to the goal of a more efficient, interconnected and sustainable functioning of the TEN-T by creating a framework which improves the performance of all ports and helps them to cope with changes in transport and logistics requirements. The TEN-T ports must help develop short sea shipping as part of intermodal routes, hence contributing to sustainable transport, one of the key goals of the Transport White Paper and contribute to the EU 2020 strategy for a resource efficient growth which will stimulate growth of trade and cargo.

This initiative ensures a balanced approach between legislative action and a soft approach, exemplified by the Social Dialogue. This is the result of an intensive and pertinent consultation of the stakeholders that allowed to focus the Regulation on measures with a high EU added value. This Regulation will avoid additional burden for those ports already functioning well and will create the conditions for the other ports to deal with their structural challenges.

1.4 Consistency with other EU policies and objectives

The proposal fits within the policy announced by the Commission in the White Paper on Transport (2011) and has been explicitly announced under the heading of a Single European Transport Area and market access to ports. The White Paper clearly states the intention of the Commission to review restrictions on provisions of port services and to enhance the transparency on ports' financing, clarifying the destination of public funding to the different port activities, with a view to avoid any distortion of competition. The proposal has also been identified as one of the key actions of the Single Market Act II and will contribute to the completion of the European Single Market.

The proposal completes and supplements on-going policies or proposals already made: the proposals on the trans-European transport network guidelines and the Connecting Europe Facility which provides a framework to support the development of hinterland connections to ports, the proposal for a Directive on the awards of concession contracts which applies to concession contracts in ports and the preparatory work on a Blue Belt initiative aiming at simplifying the customs procedures applied to EU goods carried by vessels calling at EU ports.

The proposal applies to all the ports of the TEN-T since by their very nature they all play a significant role in the European transport system either to facilitate the exchanges between Member States or to improve the regional accessibility of island or peripheral areas. It should however be stressed that the principles of non-discrimination and freedom of establishment of the Treaty on the functioning of the European Union and the competition rules also apply to the other ports, which although not in the trans-European network may have an important role at local level or for other sectors than transport like fishing or tourism. Member States may also decide to apply the provision of this proposed Regulation to these ports.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

2.1 Consultation of interested parties

DG MOVE has maintained a dialogue with the national administrations in charge of the ports' policy (Ministries of Transport). It held meetings with the main industry associations in the port sector, inter alia: port authorities (ESPO), private terminal operators (FEPORT), inland ports (EFIP), ship-owners (ECSA), pilots (EMPA), tug owners and operators (ETA), mooring operators (EBA), ship's agents (ECASBA), shippers (ESC), dredgers (EuDA) and logistic operators (CLECAT). DG MOVE also held meetings with the two main Unions of port workers, the International Dockers Council (IDC) and the dock workers' section of the European Transport Workers Federation (ETF). A sectoral social dialogue committee could not be consulted, as this is still in the process of being set up.

The preparatory work was supported by an economic study on the quality and efficiency of European ports (PwC). The work took account of extensive research on transport economics, ports and logistics and involved several discussions with industry and research experts.

Stakeholders were consulted extensively through two on-line surveys and an open stakeholders' two-day conference in Brussels (25-26 Sept. 2012). A final targeted public hearing, presenting the key problems and discussing policy options and their possible impacts was held on 18 January 2013. The main results of the consultation process (2012-2013) can be summarised as follows:

- All stakeholders stressed the need for a stable and fair level playing field both for inter-port (competition between ports) and intra-port (competition between providers of a same port service within a port) competition in the EU. The need for legal certainty and a business friendly environment with as less administrative burden as possible is a priority for all stakeholders.
- There is a major concern about unfair competition between ports linked to public funding practices of port infrastructures. Member States and port authorities request a tight control of state aid.
- A significant part of the users of port services, shipping companies and export-import industries, consider that port services in many EU ports are not satisfactory in terms of price, quality and administrative burden.
- 30% of European port authorities do not consider that the current situation is satisfactory. However, the majority of them oppose the introduction of EU procedures limiting the capacities of public authorities to grant contracts and permissions to operators of port services through direct award. Applying EU concession rules to certain contracts granted in ports is highly controversial in certain Member States.
- Port workers' trade unions extremely oppose any EU provision touching on the existing port labour regimes in certain Member States . Representatives of pilotage services argue that pilotage, although provided against remuneration, is not an economic service and should be excluded from competitive pressure.
- Most stakeholders agree that the EU port system has to evolve and adapt to significant challenges in terms of scarce funding resources, competitiveness vis-à-vis ports in neighbouring third countries and other world regions, creation of added value and jobs as well as coping with environmental impacts. They all agree on the

importance to secure and, if possible, increase, EU funding expenditure in support of ports and maritime transport.

2.2 Impact assessment

The Impact Assessment identified five operational objectives related to the two main challenges identified above.

2.2.1 Modernise port services and operations:

First, by better optimising port services and operations, a number of TEN-T ports should be able to handle or attract more cargo and passengers with the existing infrastructure. This translates into three operational objectives:

(1) Clarify and facilitate access to the port services market:

This should reduce access restrictions to the port services market while clarifying and suppressing the current legal uncertainties stemming from horizontal rules from the Treaty and on public procurement.

(2) Prevent market abuse by designated port service providers:

This should ensure that designated service providers offer their services in a cost-efficient manner while continuing to fulfil their role and possible their mission of public service, notably in the field of safety, security and environment.

(3) Improve coordination mechanisms within ports:

This should facilitate smooth operations for shippers, logistic operators and cargo-owners, reducing the time and money required for using the port. The coordination effort should also benefit operators established in the port, facilitating synergies and avoiding duplication of efforts for serving the same customers.

2.2.2 Create framework conditions to attract investments in ports:

Second, a greater financial transparency and autonomy of ports should create a level playing field, encourage more efficient charging, and eventually attract more investments. This in turn translates in two additional operational objectives:

(4) Make the financial relations between public authorities, port authorities and providers of port services transparent:

This should ensure a financial transparency between public authority functions and commercial operations in order to prevent that ports and service providers benefit from unfair competitive advantages.

(5) Ensure autonomously set and transparent port infrastructure charges:

This should achieve a more efficient use of infrastructure and more economic rationality in the planning, investment, maintenance, and operation of port infrastructures, while enabling environmental and societal price signals.

On the basis of this 4 policy options where considered:

(1) Policy Package 1: “Transparency”

Policy Package 1 (PP1) applies a soft measure (non-binding communication) to clarify and facilitate the market access of ports services. Binding provisions are however introduced in monopolistic or oligopolistic situations: in those cases the services should be subject to price supervision in order to avoid excessive or discriminatory charging. The financing and setting

of port charges is left over to the competent authorities on the condition of basic transparency. Coordination of the services inside the port is guaranteed by a port users' committee.

(2) Policy Package 2: “Regulated competition”

Policy Package 2 (PP2) introduces the principle of freedom to provide services under a scheme of regulated market access. Under this regulated market access, the freedom to provide services can be restricted if it is warranted by the lack of space in the port area or by public service obligations (availability, accessibility, etc.). In such cases, newly attributed and designated services are made subject to a public tendering procedure and in the case of in-house operations, the service needs to remain confined. Services under a monopolistic or oligopolistic situation are subject to price supervision. The transparency of financial relations between public authorities, ports authorities and port service providers is accommodated by separated accounts and rules link the setting of the port infrastructure charges to actual costs. Coordination of the services inside the port is facilitated by a port users' committee.

(3) Policy Package 2a: “Regulated competition and port autonomy”

Policy Package 2a (PP2a) consists of PP2 with the following differences:

The obligation to have recourse to public tenders in case of space restrictions or public service obligations applies not only to new contracts but also in the event of substantial changes to existing contracts. The regulatory oversight of service providers in monopolistic position is more limited in scope: it only applies to the markets which can not be contested, i.e. the markets for which no public tender is organised. Greater autonomy is given to ports: on infrastructure charging, instead of imposing that charges are linked to actual costs, each port is given the right to set itself the structure and level of port dues, provided that the charging policy is transparent. The initiative also encourages a differentiation according to the environmental performance of ships.

(4) Policy Package 3: “Full competition and port autonomy”

Policy Package 3 (PP3) builds on PP2a by obliging additionally at least two competing and independent operators for every port service where the number of operators is limited as a result of space constraint. There would also be a functional/legal separation. This separation would result in a multiplication of port actors: to ensure that the port keeps functioning, strengthening the central coordination role of the port authorities would be necessary. As in PP2a each port authority would be free to determine the structure and level of infrastructure charges according to its own commercial practices.

After analysis of the different options and potential impact the Commission concluded that the best option should be PP2a with a variant for cargo handling and passenger services. As regards the measures related to the market access to cargo handling and passenger services, there is no need to propose new legal provisions. Existing rules and requirements will be clarified in a Communication. The rules on the regulatory oversight of the price of the service providers in monopolistic or oligopolistic position and on the transparency of accounts would however apply to cargo handling and passenger services.

The impact assessment highlights the potential benefits in terms of costs savings (€10 billion until 2030), development of short sea shipping and reduction of road congestion and creation of jobs. The impact assessment indicates that this proposal does not lead to direct significant changes of the administrative burden in ports. The introduction of the freedom to provide services will reduce the administrative cost for ports, while the supervision of prices in certain cases and the consultation of users may require new administrative efforts. However it should be stressed that this proposal will indirectly contribute to the simplification by lifting

restrictions. Further simplification efforts will also be proposed in the forthcoming initiative on the Blue Belt.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1 Summary of the measures proposed

The proposal contains the following main elements:

- The Regulation applies to all the seaports identified in the Commission's proposal for Union Guidelines on the trans-European transport network.
- The freedom to provide services will be applicable to port services. However managing bodies of a port may impose minimum requirements on the providers of specific port services. When imposed, these requirements shall only relate to professional qualifications, the necessary equipment or maritime safety, general safety and security in the port and relevant environmental requirements. These requirements should not be used as a way of implicitly introducing market barriers and therefore the criteria should be objective and proportionate ensuring a fair treatment of all operators, existing and potential ones. Potential operators should have access to training to acquire relevant specific local knowledge.
- The above mentioned provision will not be imposed to cargo handling services and passengers terminals. These services are often organised by means of concession contracts falling in the scope of the future Directive on the award of concession contracts proposed by the Commission². Moreover additional legal provisions could undermine efforts being made to initiate a Social Dialogue at Union level. Contrary to pilotage services to enter and exit ports, pilotage services performed in the deep sea have no direct impact on the efficiency of port and therefore do not need to be included in this Regulation.
- Where relevant the stated freedom to provide services could be subjected to a limitation of the number of service providers. This restriction should be based on two elements: either in the case of space constraints or reservation which if clearly documented in a formal port development plan can justify to limit the number of operators active in the port perimeter or in the case of a public service obligation imposed to an operator and for which the intention should be clear and publicly available.
- A Member State should have the possibility to designate authorities competent to impose public service obligation, in line with the applicable State aid rules. The obligations of public services must be clearly defined transparent, non-discriminatory and verifiable and must relate to the availability (no-interruption), the accessibility (to all users) or the affordability (of certain categories of users) of the port service.
- In the case of public service obligations being imposed by a competent authority in a port or in several ports such an authority will have the opportunity to organise and commercially exploit specific port services itself under the condition that its activity remains confined to the port or ports where it imposes public service obligations.

² COM (2011)897 final

- Employees' rights should be safeguarded and the Member States should have the option to further strengthen these rights in the event of a transfer of undertakings and the relevant staff working for the old undertaking.
- In those case where managing bodies of the port benefit from public funds there shall be a transparent accounting in order to show the effective and appropriate use of these public funds.
- In those cases where designated port service providers have not been subject to an open public tendering procedure and in the case of internal operators, it should be ensured that the price for the service is transparent, non-discriminatory and that it is set according to normal market conditions, in particular in such way that the total charges do not exceed the total incurred costs and a reasonable profit.
- Managing bodies of the port shall define the port infrastructure charges in an autonomous way and according to its own commercial and investment strategy.
- The port infrastructure charges may be varied in accordance to commercial practices related to the frequent use of the port or in order to promote a more efficient use of the port infrastructure, short sea shipping or a high environmental performance, energy efficiency or carbon efficiency of transport operations.
- A port users' advisory committee shall be set up in every port. This committee will bring together representatives of operators of waterborne vessels, cargo owners or other port users which are requested to pay a port infrastructure charge or port service charge. This committee shall be consulted on the structure and the level of the port infrastructure charges and in certain cases the port service charges.
- The managing body of the port shall consult stakeholders such as undertakings established in the ports, providers of port services, and port users on issues like the coordination of port services, hinterland connections or administrative procedures.
- Member States shall ensure that an independent supervisory body monitors and supervises the application of this Regulation. It can be an existing body. The different national independent supervisory bodies shall exchange information about their work and decision-making principles and shall cooperate closely for the purpose of mutual assistance in their tasks.

3.2 Legal basis

The legal basis for this proposal is Article 100 (2) of the Treaty on the Functioning of the European Union.

3.3 Subsidiarity principle

Articles 58, 90 and 100 of the Treaty on the Functioning of the European Union extend to ports the objectives of a genuine internal market in the context of the Common Transport Policy.

The overwhelming share of seaborne trade handled in TEN-T ports results from trade between Member States or at international level. Ports have a clear European function. approximately one out of every two tonnes of volume handled in ports comes from or goes to, by sea or land, a Member State which is different from the one of the port in which the goods transit³. Actions by Member States alone cannot ensure a level playing field within the EU internal

³ Resulting from trade between Member States and trade between a Member State and a non-EU country through another Member State.

market, nor can they take actions to improve the performance of ports located on the same trans-European corridor but in other Member States.

Therefore, although the specific nature of the port sector and its long-lasting local history and culture is recognised, because of internal market reasons, network effects and the international dimension of the port sector, the proposed initiative is in line with the subsidiarity principle.

3.4 Proportionality principle

The Regulation only covers TEN-T seaports. This will ensure proportionality insofar as it will avoid imposing unnecessary rules on very small ports which do not have a significant role for the European transport system. By contrast the TEN-T seaports deal with the overwhelming majority of the traffic and by definition are essential for the international and intra-European trade exchanges, and therefore for the European internal market, and/or the cohesion within the EU. Moreover TEN-T ports are eligible to EU funding.

The scope has not been further limited to the core ports in order not to risk creating distortions of competition between core ports and other TEN-T ports. Moreover an efficient functioning of the network requires both core ports (typically hub) and non-core TEN-T ports for the regional distribution.

3.5 Choice of instrument

Whilst the Member States, regional and local public authorities have traditionally been the main actors involved in port infrastructure development and management this situation has been progressively changing. Transport operators, autonomous public bodies and entities and other private and public entities have also become key actors in the development, management and organisation of port. Therefore, it is important to ensure that this legislation on market access to port services and financial transparency of ports is generally applicable. Moreover, to ensure a uniform implementation, enforcement and a level playing field in the internal market, the legislation should be directly binding in its entirety. The Commission has therefore chosen a Regulation as the appropriate legal instrument for this proposal. This will also prevent additional administrative burden for Member States and the Commission.

3.6 European Economic Area

The proposed Regulation concerns an EEA matter and should therefore extend to the European Economic Area.

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100 (2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee⁴,

Having regard to the opinion of the Committee of the Regions⁵,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The full integration of ports in seamless logistic and transport chains is needed to contribute to growth and a more efficient use and functioning of the trans-European transport network and the internal market. This requires modern port services contributing to an efficient use of ports and a climate favourable to investments to develop ports in line with current and future transport and logistics requirements.
- (2) In the Communication on the Single Market Act II Together for new growth⁶, the Commission has recalled that the attractiveness of maritime transport is dependent on the availability efficiency and reliability of port services and the necessity of addressing questions regarding the transparency of public funding and port charges, administrative simplification efforts in ports and reviewing restrictions on the provision of services at ports.
- (3) Facilitating access to the port services market at Union level and introducing the financial transparency and autonomy of seaports will improve the quality and efficiency of service provided to users of the port and contribute to a climate more favourable to investments in ports, and thereby help reduce costs for transport users and contribute to promoting short sea shipping and a better integration of maritime transport with rail, inland waterway and road transport.
- (4) The overwhelming majority of Union maritime traffic transits through the seaports of the trans-European transport network. In order to achieve the aim of this Regulation in

⁴ OJ C , , p. .

⁵ OJ C , , p. .

⁶ COM(2012) 573 final (3.10.2012)

a proportionate way without imposing any unnecessary burden on other ports, this Regulation should apply to the ports of the trans-European transport network, each of which playing a significant role for the European transport system either because it handles more than 0.1% of the total EU freight or the total number of passengers or because it improves the regional accessibility of island or peripheral areas, without prejudice, however, to the possibility of Member States deciding to apply this Regulation to other ports as well. Pilotage services performed in the deep sea do not have a direct impact on the efficiency of the ports as they are not used for the direct entry and exit of the ports and therefore do not need to be included in this Regulation.

- (5) The objective of Article 56 of the Treaty on the Functioning of the European Union is to eliminate restrictions on freedom to provide services in the Union. In accordance with Article 58 of the Treaty on the Functioning of the European Union should be achieved within the framework of the provisions of the Title relating to transport, more specifically Article 100 (2).
- (6) The self-provision of service which entails shipping companies or providers of port services to employ staff of their own choice and to provide themselves port services is regulated in a number of Member States for safety or social reasons. The stakeholders consulted by the Commission when preparing its proposal highlighted that imposing a generalised allowance of the self-provision of service at Union level would require additional rules on safety and social issues in order to avoid possible negative impacts in these areas. It appears therefore appropriate at this stage not to regulate this issue at Union level and to leave it to the Member States to regulate the self-provision of port services or not. Therefore, this Regulation should only cover the provision of port services for remuneration.
- (7) In the interest of efficient, safe and environmentally sound port management, the managing body of the port should be able to require that port service providers can demonstrate that they meet minimum requirements to perform the service in an appropriate way. These minimum requirements should be limited to a clearly defined set of conditions concerning the professional qualifications of the operators, including in terms of training, and the equipment required insofar as these requirements are transparent, non-discriminatory, objective and relevant for the provision of the port service.
- (8) Having the necessary equipment at his disposal should imply that the provider of the port service owns, rents or leases it and that in any case it has a direct and indisputable control of the equipment, in order to ensure that it can use such equipment whenever needed.
- (9) The procedure to grant with the right to provide port services when compliance with minimum requirements is required should be transparent, objective and non-discriminatory and should allow the providers of port services to start the provision of their port services in a timely manner.
- (10) Since ports are constituted of limited geographical areas, access to the market could, in certain cases, be subject to limitations relating to the scarcity of land or in case the land is reserved for certain type of activities in accordance with a formal development plan which plans in a transparent way the land use and with relevant national legislation such as those related to town and country planning objectives.
- (11) Any intention to limit the number of port service providers should be published in advance by the competent authority and should be fully justified, in order to give the

interested parties the opportunity to comment. The criteria for any limitation should be objective, transparent and non-discriminatory.

- (12) In order to be open and transparent, the procedure to select the providers of port services and its result should be made public and full documentation should be communicated to interested parties.
- (13) The selection procedure for providers of port service in the case the number of those providers is limited should follow the principles and approach determined in Directive .../... [concession]⁷, including the threshold and method for determining the value of the contracts as well as the definition of substantial modifications and the elements related to the duration of the contract.
- (14) The recourse to public service obligations leading to a limitation in the number of providers of a port service should only be justified for reasons of public interest in order to ensure the accessibility of the port service to all users, the availability of the port service all year long or the affordability of the port service to certain category of users.
- (15) Where there is a need to limit the number of port service providers, the decision on that limitation may be entrusted by the Member state to a different authority in order to safeguard competition. Any limitation in the number of providers of port services should follow a procedure which is open, transparent and non-discriminatory. This should however not be the case when public service obligations are to be entrusted directly to a competent authority or an internal operator.
- (16) This Regulation does not preclude the possibility of competent authorities to grant compensation for the accomplishment of the public service obligations provided that it complies with the applicable State aid rules. Where public service obligations qualify as SGEI compliance should be ensured with Commission Decision of 20 November 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest⁸, Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest⁹ and the European Union framework for State aid in the form of public service compensation¹⁰.
- (17) The managing body of the port should not discriminate between providers of port services, in particular in favour of an undertaking or body in which it holds an interest.
- (18) The competent authorities designated in a Member State should have the choice to decide to provide port services with public service obligations themselves or to entrust directly the provision of such services directly to an internal operator. In the case that a competent authority decides to provide the service itself, this may cover the provision of services through agents employed by the competent authority or commissioned by the competent authority. When such limitation is applied in all the TEN-T ports in the territory of a Member State, the Commission should be informed. In the cases where

⁷ Proposal for a Directive on the award of concession contracts (COM 2011) 897 final

⁸ OJ L 7, 11.1.2012, p. 3.

⁹ OJ L 114, 26.4.2012, p.8.

¹⁰ OJ C 8, 11.01.2012

the competent authorities in a Member State prevail on such a choice, the provision of port services by the internal operators should be confined only to the port or ports for which those internal operators were designated. Moreover, in such cases, the port service charges applied by such an operator should be subject to supervision by the independent supervisory body.

- (19) Member States should retain the power to ensure an adequate level of social protection for the staff of undertaking providing port services. This Regulation shall not affect the application of the social and labour rules of the Member States. In cases of limitation of the number of port service providers, where the conclusion of a port service contract may entail a change of port service operator, it should be possible for the competent authorities to ask the chosen service operator to apply the provisions of Council Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses¹¹.
- (20) In many ports, the market access for providers of cargo-handling and terminal passenger services is granted by means of public concession contracts. This type of contracts will be covered by the Directive .../...[concessions]. Consequently, Chapter II of this Regulation should not apply to the provision of cargo-handling and passenger services, but Member States should remain free to decide to apply nevertheless the rules of this Chapter to these two services. For other types of contracts used by public authorities for granting market access to cargo handling and terminal passenger services, the Court of Justice of the European Union has confirmed that the competent authorities are bound by the principles of transparency and non-discrimination when concluding these contracts. These principles are fully applicable as regards the provision of any port service.
- (21) Financial relations between seaports which receive public funds and providers of port services on the one hand, and public authorities on the other should be made transparent in order to ensure a level playing field and to avoid market distortions. In this respect, this Regulation extends to other categories of addressees the principles of transparency of financial relations as set out in Commission Directive 2006/111/EC on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings¹² without prejudice to its scope.
- (22) It is necessary to impose on the managing body of the port which receives public funds, when it is also acting as a service provider, an obligation to keep separate accounts for activities carried out in their capacity as managing body of the port from those carried out on a competitive basis in order to ensure a level playing field, transparency in the allocation and use of public funds and to avoid market distortions. In any case compliance with the State aid rules should be ensured.
- (23) Port service charges applied by providers of port services which are not designated in accordance with an open, transparent and non-discriminatory procedure entail a higher risk of price abuse given their monopolistic or oligopolistic situation and the fact that their market cannot be contested. The same is true for charges levied by internal operators in the meaning of this Regulation. For those services, in the absence of fair market mechanisms, arrangements should be established to ensure that the charges

¹¹ OJ L 82, 22.3.2001, p. 16.

¹² OJ L 318, 17.11.2006, p.17.

they levy reflect the normal conditions of the relevant market and are set in a transparent and non-discriminatory way.

- (24) In order to be efficient, the port infrastructure charges of each individual port should be set in a transparent and autonomous way in accordance with that port's own commercial and investment strategy.
- (25) The variation of port infrastructure charges should be allowed in order to promote short sea shipping and to attract waterborne vessels having an environmental performance or energy and carbon efficiency of the transport operations, notably the off-shore or on-shore maritime transport operations, that is better than average. This should help to contribute to the environmental and climate change policies and the sustainable development of the port and its surroundings notably by contributing to reducing the environmental footprint of the waterborne vessels calling and staying in the port.
- (26) Adequate facilities should be in place to ensure that the users of the ports which are requested to pay a port infrastructure charge and/or a port service charge are regularly consulted when the port infrastructure charge and the port service charge are defined and changed. The managing bodies of the ports should also regularly consult other stakeholders on key issues related to the sound development of the port, its performance and its capacity to attract and generate economic activities such as the coordination of port services within the port area and the efficiency of the connections with the hinterland and of the administrative procedures in ports.
- (27) In order to ensure the proper and effective application of this Regulation, an independent supervisory body, which could be an already existing body, should be designated in every Member State.
- (28) The different independent supervisory bodies should exchange information on their work and cooperate in order to ensure a uniform application of this Regulation.
- (29) In order to supplement and amend certain non-essential elements of this Regulation and in particular to promote the uniform application of environmental charging, reinforce the Union-wide coherence of environmental charging and to ensure common charging principles in relation to the promotion of short sea shipping, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of common classifications of vessels, fuels and types of operations according to which to vary the infrastructure charges and common charging principles for port infrastructure charges. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.
- (30) In order to ensure uniform conditions for the implementation of this Regulation implementing powers relating to appropriate arrangements for the exchange of information between independent supervisory bodies should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011

laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers¹³.

- (31) Since the objectives of this Regulation, namely ensuring the modernisation of port services and the appropriate framework to attract necessary investments in all the ports of the trans-European transport network, cannot be sufficiently achieved by the Member States because of the European dimension, international and cross-border nature of port and related maritime business and can therefore, by reason of the need for a European level playing field, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (32) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

¹³ OJ L 55, 28.2.2011, p. 13.

HAVE ADOPTED THIS REGULATION:

CHAPTER I – Subject matter, scope and definitions

Article 1

Subject matter and scope

1. This Regulation establishes:
 - (a) a clear framework for access to the market of port services;
 - (b) common rules on the financial transparency and charges to be applied by managing bodies or providers of port services.
2. This Regulation shall apply to the provision of the following categories of port services, either inside the port area or on the waterway access to and from the ports.
 - (a) bunkering
 - (b) cargo handling;
 - (c) dredging;
 - (d) mooring;
 - (e) passenger services;
 - (f) port reception facilities;
 - (g) pilotage and;
 - (h) towage.
3. This Regulation shall apply to all seaports of the trans-European transport network, as defined in Annex I of Regulation XXX [regulation on the TEN-T Guidelines].
4. Member States may also apply this Regulation to other seaports. When Member States decide to apply this Regulation to other seaports they shall notify their Decision to the Commission.

Article 2

Definitions

For the purpose of this Regulation:

1. "bunkering" means the provision of solid, liquid or gaseous fuel or any other energy source used for the propulsion of the waterborne vessel as well as for general and specific energy provision on board of the waterborne vessel whilst at berth;
2. "cargo handling services" means the organisation and handling of cargo between the carrying waterborne vessel and the shore be it for import, export or transit of the cargo, including the processing, transporting and temporary storage of the cargo on the relevant cargo handling terminal and directly related to the transporting of the cargo, but excluding warehousing, stripping, repackaging or any other value added services related to the handled cargo;
3. "dredging" means the removal of sand, sediment or other substances from the bottom of the waterway access to a port in order to allow waterborne vessel to have access to the port and comprises both the initial removal (capital dredging) and the maintenance dredging in order to keep the waterway accessible;

4. "essential port facility" means a facility of which the access is indispensable to perform a port service and which cannot be replicated under normal market conditions;
5. "managing body of the port" means any public or private body which, whether or not in conjunction with other activities, has as its objective under national law or instruments the administration and management of the port infrastructures, port traffic, the coordination and, where appropriate, the control of the activities of the operators present in the port concerned;
6. "mooring" means the berthing and un-berthing services required for a waterborne vessel being anchored or otherwise fastened to the shore in the port or in the waterways access to the port;
7. "passenger services" means the organisation and handling of passengers between the carrying waterborne vessel and the shore and also includes the processing of personal data and transporting the passengers inside the relevant passenger terminal;
8. "pilotage" means the guidance service of a waterborne vessel by a pilot or a pilotage station in order to allow for a safe entry or exit of the vessel in the waterways access to the port;
9. "port infrastructure charge" means a fee collected for the direct or indirect benefit of the managing body of the port and paid by the operators of waterborne vessels or cargo owners for the use of facilities and services that allow vessels entry and exit in and out of the port, including the waterways giving access to those ports, as well as access to the processing of passengers and cargo;
10. "port reception facility" means any facility, which is fixed, floating or mobile and capable of receiving ship-generated waste or cargo residues as defined in Directive 2000/59/EC of the European Parliament and of the Council on port reception facilities for ship-generated waste and cargo residues¹⁴;
11. "port service charge" means a fee collected for the benefit of the provider of port services and paid by the users of the relevant service;
12. "port service contract" means a formal and legally binding agreement between a provider of port service and a competent authority whereby this body designates a provider of port service to provide port services following a procedure to limit the number of providers of port services;
13. "provider of port services" means any natural or legal person providing, or wishing to provide, for remuneration, one or more categories of port services listed in Article 1(2);
14. "public service obligation" means a requirement defined or determined in order to ensure the provision of those port services in the general interest that an operator, if it were considering its own commercial interests, would not assume or would not assume to the same extent or under the same conditions;
15. "short sea shipping" means the movement of cargo and passengers by sea between ports situated in geographical Europe or between those ports and ports situated in non-European countries having a coastline on the enclosed seas bordering Europe;

¹⁴ OJ L 332, 28.12.2000, p.81-90.

16. "seaport" means an area of land and water made up of such works and equipment so as to permit, principally, the reception of ships, their loading and unloading, the storage of goods, the receipt and delivery of these goods and the embarkation and disembarkation of passengers; and any other infrastructure necessary for transport operators within the port area;
17. "towage" means the assistance to a waterborne vessel by means of a tug in order to allow for a safe entry or exit of the port by providing assistance to the manoeuvring of the waterborne vessel;
18. "waterway access to a port" means water access to the port from the open sea, such as port approaches, fairways, rivers, sea canals and fjords.

CHAPTER II – Market access

Article 3

Freedom to provide services

1. Freedom to provide services in seaports covered by this Regulation shall apply to the providers of port services established in the Union under the conditions set out in this Chapter.
2. Providers of port services shall have access to essential port facilities to the extent necessary for them to carry out their activities. The terms of the access shall be fair, reasonable and non-discriminatory.

Article 4

Minimum requirements for the provision of port services

1. The managing body of the port may require that providers of port services comply with minimum requirements to perform the corresponding port service.
2. The minimum requirements provided for in paragraph 1 may only relate, where applicable, to:
 - (a) the professional qualifications of the port service provider, its personnel or the natural persons who effectively and continuously are managing the activities of the port service provider;
 - (b) the equipment needed to provide the relevant port service in normal and safe conditions and the capacity to maintain this equipment at the appropriate level;
 - (c) the compliance with requirements on the maritime safety or the safety and security of the port or access to it, its installations, equipment and persons;
 - (d) the compliance with local, national, Union and international environmental requirements.
3. The minimum requirements shall be transparent, non-discriminatory, objective and relevant to the category and nature of port services concerned.
4. Where the minimum requirements include specific local knowledge or acquaints with local conditions, the managing body of the port shall ensure that adequate access to relevant training exists, under transparent and non-discriminatory conditions, unless adequate access to such training is ensured by the Member State.
5. In the cases provided for in paragraph 1, the minimum requirements referred to in paragraph 2 and the procedure for the granting of the right to provide port services

under those requirements shall have been published by the managing body of the port by 1 July 2015 or for minimum requirements being applicable after that date at least three months before the date on which those requirements would become applicable. Providers of port services shall be informed in advance of any change in the criteria and of the procedure.

Article 5

Procedure to ensure compliance with the minimum requirements

1. The managing body of the port shall treat providers of port services equally and shall act in a transparent manner.
2. The managing body of the port shall grant or refuse the right to provide port services on the basis of the minimum requirements established in accordance with Article 4 within one month from receiving a request for the granting of such a right. Any refusal shall be duly justified on the basis of objective, transparent, non-discriminatory and proportionate criteria.
3. Any limit in the duration of the decision issued in accordance with paragraph 2 may be justified only on grounds related to the type and nature of the port service.

Article 6

Limitations of the number of providers of port services

1. By way of derogation from Article 3, the managing body of the port may limit the number of providers of port service for a given port service for one or several of the following reasons:
 - (a) the scarcity or reserved use of land provided that the managing body can demonstrate that the land constitutes an essential port facility to provide the port service and that the limitation is in accordance with the formal development plan of the port as agreed by the management body of the port and where appropriate any other public competent authorities according to the national legislation;
 - (b) the public service obligations as provided for in Article 8, insofar as the absence of limitation can obstruct the performance of the obligations assigned to the providers of port services.
2. The managing body of the port shall publish any proposal to apply paragraph 1 at least six months in advance together with the grounds justifying it, giving any interested party the opportunity to comment within a reasonable period.
3. The managing body of the port shall publish the adopted decision.
4. When a managing body of a port provides port services itself or through a legally distinct entity which it directly or indirectly controls, the Member State may entrust the adoption of the decision limiting the number of providers of port services to an authority which is independent from the managing body of the port. If the Member State does not entrust the adoption of the decision limiting the number of providers of port services to such an authority, the number of providers shall not be less than two.

Article 7

Procedure for the limitation of the number of providers of port services

1. Any limitation of the number of providers for a port service in accordance with Article 6 shall follow a selection procedure which shall be open to all interested parties, non-discriminatory and transparent.
2. If the estimated value of the port service exceeds the threshold defined in paragraph 3, the rules on the award procedure, the procedural guarantees and the maximum duration of the concessions as set out in Directive .../... [concession] shall apply.
3. The threshold and the method to determine the value of the port service shall be those of the relevant and applicable provisions of Directive .../... [concession].
4. The selected provider or providers and the managing body of the port shall conclude a port service contract.
5. For the purposes of this Regulation, a substantial modification within the meaning of Directive .../... [concession] of the provisions of a port service contract during its term shall be considered as a new port service contract and shall require a new procedure as referred to in paragraph 2.
6. Paragraphs 1 to 5 of this Article shall not apply in the cases referred to in Article 9.
7. This Regulation is without prejudice to Directive .../... [concession]¹⁵, Directive .../...[public utilities]¹⁶ and Directive .../... [public procurement]¹⁷

Article 8

Public service obligations

1. Member States may decide to impose public service obligations related to port services on providers in order to ensure the following:
 - (a) the availability of the service without interruption during the day, the night, the week and the year;
 - (b) the availability of the service to all users;
 - (c) the affordability of the service for certain categories of users.
2. The obligations referred to in paragraph 1 shall be clearly defined, transparent, non-discriminatory, verifiable and shall guarantee equality of access to all port service providers established in the Union.
3. The Member States shall designate the competent authorities within their territory to impose such public service obligations. The managing body of the port may be the competent authority.
4. When the competent authority designated in accordance with paragraph 3 is different from the managing body of the port, that competent authority shall exercise the powers provided for in Articles 6 and 7 concerning the limitation of the number of providers of port services based on public service obligations.

¹⁵ Proposal for a Directive on the award of concession contracts (COM 2011) 897 final

¹⁶ Proposal for a Directive on procurement by entities operating in the water, energy, transport and postal services sectors (COM/2011/0895 final)

¹⁷ Proposal for a Directive on public procurement (COM/2011/0896 final)

5. If a competent authority decides to impose public service obligations in all the seaports covered by this Regulation in a Member State, it shall notify these obligations to the Commission.
6. In the event of a disruption of port services for which public service obligations are imposed or when an immediate risk of such a situation occurs, the competent authority may take an emergency measure. The emergency measure may take the form of a direct award so as to attribute the service to a different provider for a period up to one year. During that time period, the competent authority shall either launch a new procedure to select a provider of port service in accordance with Article 7 or shall apply Article 9.

Article 9

Internal operator

1. In the cases provided for in Article 6 (1) (b), the competent authority may decide to provide a port service under public service obligations itself or to impose such obligations directly on a legally distinct entity over which it exercises a control similar to that exercised over its own departments. In such a case, the port service provider shall be considered as an internal operator for the purpose of this Regulation.
2. The competent authority shall be considered as exercising a control of a legally distinct entity similar to that exercised to its own departments only if it exercises a decisive influence over both the strategic objectives and the significant decisions of the controlled legal entity.
3. The internal operator shall be confined to perform the assigned port service only in the port(s) for which the assignment to provide the port service has been attributed to him.
4. If a competent authority decides to apply paragraph 1 in all the seaports covered by this Regulation in a Member State, it shall inform the Commission.
5. This Article is without prejudice to Directive .../...[concession].

Article 10

Safeguarding of employees' rights

1. This Regulation shall not affect the application of the social and labour rules of the Member States.
2. Without prejudice to national and Union law including collective agreements between social partners, the managing bodies of the port may require the designated provider of port services appointed in accordance with the procedure established by Article 7, in the case where this provider is different from the incumbent provider of port services, to grant staff previously taken on by the incumbent provider of port services the rights to which they would have been entitled if there had been a transfer within the meaning of Directive 2001/23/EC.
3. Where managing bodies of the port require providers of port services to comply with certain social standards as regards the provision of relevant port services, tender documents and port service contracts shall list the staff concerned and give transparent details of their contractual rights and the conditions under which employees are deemed to be linked to the port services.

Article 11
Exemption

This Chapter and the transitional provisions of Article 24 shall not apply to cargo handling services and passenger services.

CHAPTER III – Financial transparency and autonomy

Article 12
Transparency of financial relations

1. The financial relations between public authorities and a managing body of the port that receives public funds shall be reflected in a transparent way in the accounts in order to clearly show the following:
 - (a) public funds made available directly by public authorities to the managing bodies of the port concerned;
 - (b) public funds made available by public authorities through the intermediary of public undertakings or public financial institutions; and
 - (c) the use which these public funds have been attributed for.
2. Where the managing body of the port that receives public funds provides port services itself, it shall keep the accounts of each port service activity separate from the accounts of its other activities, in such a way that :
 - (a) all costs and revenues are correctly assigned or allocated on the basis of consistently applied and objectively justifiable cost accounting principles; and
 - (b) the cost accounting principles according to which separate accounts are maintained are clearly established.
3. The public funds referred to in paragraph 1 shall include share capital or quasi-capital funds, non-refundable grants, grants only refundable in certain circumstances, award of loans including overdrafts and advances on capital injections, guarantees given to the managing body of the port by public authorities, dividends paid out and profits retained or any other form of public financial support.
4. The managing body of the port shall keep the information concerning the financial relations as referred to in paragraphs 1 and 2 of this Article at the disposal of the Commission and of the competent independent supervisory body as referred to in Article 17 for five years from the end of the fiscal year to which the information refers.
5. The managing body of the port shall make available to the Commission and the competent independent supervisory body, upon request, any additional information that they deem necessary in order to complete a thorough appraisal of the data submitted and to assess compliance with this Regulation. The information shall be transmitted within two months from the date of the request.
6. Managing bodies of the port that have not received public funds in previous accounting years but which start benefitting from public funds shall apply paragraphs 1 and 2 from the accounting year following the transfer of the public funds
7. Where public funds are paid as a compensation for a public service obligation, they shall be shown separately in the relevant accounts and may not be transferred to any other service or business activity.

Article 13

Port service charges

1. The charges for the services provided by an internal operator as referred to in Article 9 and the charges levied by providers of port service, in cases of limitation of the number of providers which have not been designated on the basis of procedures which are open, transparent and non-discriminatory, shall be set in a transparent and non-discriminatory way. These charges shall reflect the conditions on a competitive relevant market and shall not be disproportionate to the economic value of the service provided.
2. The payment of the port service charges may be integrated in other payments, such as the payment of the port infrastructure charges. In this case, the provider of port service and, where appropriate, the managing body of the port shall make sure that the amount of the port service charge remains easily identifiable by the user of the port service.
3. The port service provider shall make available to the competent independent supervisory body as referred to in Article 17, upon request, information on the elements serving as a basis to determine the structure and the level of the port service charges that falls under the application of paragraph 1 of this Article. This information shall include the methodology used for setting the port charges with regard to the facilities and services to which these port service charges relate to.

Article 14

Port infrastructure charges

1. The managing body of the port shall levy a port infrastructure charge. This shall not prevent providers of port services which are using port infrastructures from levying port service charges.
2. The payment of the port infrastructure charges may be integrated in other payments, such as the payment of the port service charges. In this case, the managing body of the port shall make sure that the amount of the port infrastructure charge remains easily identifiable by the user of the port infrastructure.
3. In order to contribute to an efficient infrastructure charging system, the structure and the level of port infrastructure charges shall be defined in an autonomous way by the managing body of the port according to its own commercial strategy and investment plan reflecting competitive conditions of the relevant market and in accordance with State aid rules.
4. Without prejudice to paragraph 3, port infrastructure charges may vary in accordance with commercial practices related to frequent users, or in order to promote a more efficient use of the port infrastructure, short sea shipping or a high environmental performance, energy efficiency or carbon efficiency of transport operations. The criteria used for such a variation shall be relevant, objective, transparent and non-discriminatory and in due respect of the competition rules. The resulting variation shall in particular be available to all relevant port service users on equal terms.
5. The Commission shall be empowered to adopt, where necessary, delegated acts in accordance with the procedure referred to in Article 21 concerning common classifications of vessels, fuels and types of operations according to which the infrastructure charges can vary and common charging principles for port infrastructure charges.

6. The managing body of the port shall inform port users and the representatives or associations of port users about the structure and the criteria used to determine the amount of the port infrastructure charges, including the total costs and revenues serving as a basis to determine the structure and the level of the port infrastructure charges. It shall inform users of the port infrastructures of any changes in the amount of the port infrastructure charges or in the structure or criteria used in order to determine such charges at least three months in advance.
7. The managing body of the port shall make available to the competent independent supervisory body and to the Commission, upon request, the information referred to in paragraph 4 and the detailed costs and revenues, serving as a basis to determine the structure and the level of the port infrastructure charges and the methodology used for setting the port infrastructure charges with regard to the facilities and services to which these port charges relate to.

CHAPTER IV – General and final provisions

Article 15

Consultation of port users

1. The managing body of the port shall establish a committee of representatives of operators of waterborne vessels, cargo owners or other port users which are requested to pay an infrastructure charge or a port service charge or both. This committee shall be called the "port users' advisory committee".
2. The managing body of the port shall consult on an annual basis prior to the setting of port infrastructure charges the port users' advisory committee on the structure and level of such charges. The providers of port services as referred to in Article 6 and in Article 9 shall consult on an annual basis prior to the setting of port service charges the port users' advisory committee on the structure and level of such charges. The managing body of the port shall provide adequate facilities for such consultation and shall be informed of the results of the consultation by the providers of port services.

Article 16

Consultation of other stakeholders

1. The managing body of the port shall regularly consult stakeholders such as undertakings established in the port, providers of port services, operators of waterborne vessels, cargo owners, land transport operators and public administrations operating in the port area on the following:
 - (a) the proper coordination of port services within the port area;
 - (b) measures to improve the connections with the hinterland and where appropriate measures to develop and improve the efficiency of rail and inland waterways connections;
 - (c) the efficiency of the administrative procedures in port and where appropriate possible measures to simplify them.

Article 17

Independent supervisory body

1. Member States shall ensure that an independent supervisory body monitors and supervises the application of this Regulation in all the seaports covered by this Regulation on the territory of each Member State.
2. The independent supervisory body shall be legally distinct from and functionally independent of any managing body of the port or providers of port services. Member States that retain ownership or control of ports or port managing bodies shall ensure an effective structural separation between the functions relating to the supervision and monitoring of this Regulation and the activities associated with that ownership or control. The independent supervisory body shall exercise its powers impartially and transparently and with due respect to the right to freely conduct business.
3. The independent supervisory body shall handle the complaints lodged by any party with a legitimate interest and the disputes brought before it arising in connection with the application of this Regulation.
4. In the event that the dispute arises between parties established in different Member States, the independent supervisory body of the Member State of the port where the dispute is presumed to have its origin shall have competence to solve the dispute.
5. The independent supervisory body shall have the right to require managing bodies of the ports, providers of port services and port users to submit information needed to ensure monitoring and supervision of the application of this Regulation.
6. The independent supervisory body may issue opinions at the request of a competent authority in the Member State on any issues in relation to the application of this Regulation.
7. The independent supervisory body may consult the port users' advisory committee of the port concerned when dealing with the complaints or disputes.
8. The decisions of the independent supervisory body shall have binding effects, without prejudice to judicial review.
9. Member States shall notify to the Commission the identity of the independent supervisory bodies by 1 July 2015 at the latest and subsequently any modification thereof. The Commission shall publish and update the list of the independent supervisory bodies on its website.

Article 18

Cooperation between independent supervisory bodies

1. The independent supervisory bodies shall exchange information about their work and decision-making principles and practices in order to facilitate a uniform implementation of this Regulation. For this purpose, they shall participate and work together in a network that convenes at regular intervals and at least once a year. The Commission shall participate, coordinate and support the work of the network.
2. The independent supervisory bodies shall cooperate closely for the purposes of mutual assistance in their tasks, including in carrying out investigations required to handle complaints and disputes in cases involving ports in different Member States. For this purpose, an independent supervisory body shall make available to another

such body, after a substantiated request, the information necessary to allow that body to fulfil its responsibilities under this Regulation.

3. The Member States shall ensure that the independent supervisory bodies shall provide the Commission, after a reasoned request, with the information necessary for it to carry its tasks. The information requested by the Commission shall be proportionate to the performance of those tasks.
4. Where information is considered confidential by the independent supervisory body in accordance with Union or national rules on business confidentiality, the other national supervisory body and the Commission shall ensure such confidentiality. This information may only be used for the purpose which it was requested.
5. Based on the experience of the independent supervisory bodies and on the activities of the network referred to in paragraph 1, and in order to ensure efficient cooperation, the Commission may adopt common principles on the appropriate arrangements for the exchange of information between independent supervisory bodies. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22(2).

Article 19

Appeals

1. Any party with a legitimate interest shall have the right to appeal against the decisions or individual measures taken under this Regulation by the competent authorities, by the managing body of the port or by the independent supervisory body to an appeal body which is independent of the parties involved. This appeal body may be a court.
2. Where the appeal body referred in paragraph 1 is not judicial in character, it shall give reasons in writing for its decisions. Its decisions shall also be subject to review by a national court.

Article 20

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by 1 July 2015 at the latest and shall notify it without delay of any subsequent amendment affecting them.

Article 21

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 14 shall be conferred on the Commission for an indeterminate period of time.
3. The delegation of power referred to in Article 14 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European*

Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 14 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

Article 22

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 23

Report

No later than three years after the entry into force of this Regulation, the Commission shall present a report to the European Parliament and the Council on the functioning and effect of this Regulation, accompanied, if appropriate, by relevant proposals.

Article 24

Transitional measures

1. Port service contracts concluded before [date of adoption of the Regulation] which were entrusted to selected providers of port services based on an open, transparent and non-discriminatory procedure or are otherwise in conformity with the rules of this Regulation shall continue to be valid until their expiry.
2. Port service contracts concluded before [date of adoption of the Regulation] which do not meet the conditions provided in paragraph 1 shall remain valid until they expire but not after 1 July 2025.

Article 25

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply with effect from 1 July 2015.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President



Brussels, 23.5.2013
COM(2013) 295 final

COMMUNICATION FROM THE COMMISSION

Ports: an engine for growth

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COMMUNICATION FROM THE COMMISSION

Ports: an engine for growth

1. INTRODUCTION

The Union is highly dependent on seaports for trade with the rest of the world and within its Internal Market. 74% of goods imported and exported and 37% of exchanges within the Union transit through seaports. Ports guarantee territorial continuity of the Union by servicing regional and local maritime traffic to link peripheral and island areas. They are the nodes from where the multimodal logistic flows of the trans-European network can be organised, using short sea shipping, rail and inland waterways links to minimise road congestion and energy consumption.

The 2011 White Paper on Transport and the Single Market Act II emphasise the need for well-connected port infrastructure, efficient and reliable port services and transparent port funding. The availability of adequate port infrastructure, good performance of port services and a level playing field are vital if the Union is to remain competitive in the global markets, improve its growth potential and create a more sustainable and inclusive EU transport system to underpin the internal market.

When faced with the challenge of a fully integrated transport network, the Union's port system is confronted by structural performance gaps. Investments are needed to adapt port infrastructure and facilities to suit new transport and logistics requirements and absorb the expected growth of cargo for the next decade during a time of scarce public funding. If nothing is done an opportunity will be missed to increase options available to transport operators and shippers and create growth and jobs in coastal areas and across the Union as a whole.

This Communication reviews the European Port Policy and builds on the progress achieved. It accompanies and supplements a 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. It identifies eight additional set of EU actions needed to further unlock the potential of ports. This revised European Port Policy covers the trans-European transport network seaports, which account for 96% of freight and 93% of passengers transiting through ports in the Union.

2. CHALLENGES

In its Communication on the European Port Policy in 2007¹, the Commission identified the main causes of the challenges faced by the sector. These related to threats on port performance and hinterland connections, the need to modernise ports while respecting the environment, the lack of transparency in the use of public funding, market access restrictions and issues on the organisation of labour in ports.

The approach taken in 2007 was to address these issues by means of horizontal instruments and soft measures on the access to the market of port services and financial transparency. Since then, some progress has been made and a number of developments have taken place, in particular:

¹ COM(2007)616

- In 2011, the Commission adopted a proposal for a Directive on Concessions². This proposal applies to concession contracts granted in ports, although some form of awarding contracts such as land leases are not covered.
- The Commission has proposed new guidelines for the development of the trans-European network (TEN-T)³ and the Connecting Europe Facility (CEF)⁴ which provide a common planning tool for more targeted investments while widening the possibilities for EU financial support.
- In the context of the European Semester, the economic crisis has led some Member States to introduce reforms of their port sector. These vary in scope and efficiency and have primarily been shaped by the need for fiscal consolidation.
- The Court of Auditors found in 2012 that Structural Funds invested in EU port facilities have limited added value if they are not connected as multimodal nodes to the trans-European, national and regional transport networks.

Admittedly, the soft measures proposed in 2007 on a fair market access and on transparency have had little or no impact. There is no single level playing field for the sector and the interventions at national level since then paradoxically threaten to fragment the internal market even more. Consequentially, most of the issues identified in 2007 are still relevant today. EU ports have yet to take on fully their role as enablers for growth and multimodality.

Structural performance gap between ports

Ports are the main gateways to the trans-European network. The EU requires ports well developed and efficient by international standards in all its maritime regions. While some European ports are among the most performing ports in the world, other ports continually underperform or are in structural decline⁵. Those ports restrict the economies of both the regions they serve and the Union as a whole. This structural performance gap reduces options available to EU and international maritime and logistic operators. Today, 20% of the goods coming to Europe by sea pass through just three ports. High performing ports cannot optimally develop their maritime connections with other EU ports, increasing the risk of congestion in their hinterland, in particular road congestion, to the detriment of citizens living there. The structural gap threatens the development of short sea shipping as an alternative to saturated land routes.

In 2011 EU ports handled 3.7 billion tonnes. According to the latest projections in a low growth scenario, it is estimated that volume will increase by 50% by 2030⁶. All ports across the trans-European network will be needed to help accommodate this growth.

Need for ports to adapt to new requirements

The challenges faced are exacerbated by the fact that the sector is continually evolving and has the potential to make existing port infrastructure obsolete or require significant upgrade. Changes include:

- Increased size and complexity of the fleet, in particular ultra-large container ships, new types of Ro-Ro ferries and gas-carriers. For example, a leading European shipping line has ordered 20 ships for 2015 with a capacity of 18,000 Twenty Foot

² COM(2011)897

³ COM(2011)650

⁴ COM (2011)665

⁵ SWD(2013)181

⁶ SWD(2013)181

Equivalent Units (TEU). This is the equivalent of a continuous lane of heavy goods vehicles from Rotterdam to Paris.

- Stricter requirements on environmental performance and alternative fuels (e.g. cold ironing⁷ and LNG). The Commission's Clean Power for Transport initiative and the proposal for a Directive on the deployment of alternative fuels infrastructure⁸ requires that all maritime ports of the TEN-T Core network are equipped with LNG refuelling points according to common technical standards by 2020.
- Trends in the fast growing cruise industry and in logistics and distribution systems have led to an increased need for value added services within the area of the port; and
- Significant developments in the energy trades, with a shift from oil and refined products towards gas; a need for significant gasification facilities in ports; potential volumes of dry biomass and CO₂ transport and storage.

These changes put pressure on infrastructure and investments including the extension of berths, quays, locks, deepening of basins and canals and reconfiguration to enable manoeuvring of larger ships. Ports require new facilities such as cranes, new passenger terminals, new operational procedures and good sequential or parallel coordination of the different services provided by the port actors inside the port and outside the port in the context of door-to-door logistics. Moreover, ports are important critical infrastructures, as key service providers to the entire economy, and a possible gate for unlawful trades concerning drugs, weapons, counterfeited goods and even CBRN⁹ materials Security concerns will have to be continuously addressed in an appropriate manner¹⁰. Overall, ports will need to invest in order to meet all these technological, industrial, safety, security, environmental and climate change challenges.

A European challenge

EU ports, and especially the ports of the trans-European network, service a hinterland and a catchment area which go beyond their local and national borders. They are vital to the functioning of the European Union: approximately one out of every two tonnes of volume handled in ports comes from or goes to, by sea or land, a Member State which is different from the one of the port in which the goods transit¹¹. The trans-European network is only as strong as its weakest link, so ports must perform well across the board. The absence of a fair level playing field ensuring consistency with the principles of the internal market in the port sector is at the core of the structural performance gap between ports.

Diversity of governance models and ownership structures is an important feature of the European port system, with no two ports operating in exactly the same way. The European Port Policy respects that diversity and does not seek to impose a uniform model for ports.

⁷ Use of shore-side supply of electricity by ships while calling

⁸ COM(2013)17 and COM (2013)18

⁹ N.B. Chemical, Biological, Radiological, and Nuclear

¹⁰ Under the terms of Directive 2005/65/EC and of Regulation 725/204, the Commission in cooperation with the Member States, carries out inspections to monitor the application of relevant security measures in EU ports

¹¹ Resulting from trade between Member States and trade between a Member State and a non-EU country through another Member State.

3. STRATEGY

After a long and detailed consultation process¹², the Commission has come to the conclusion that the review of port policy should pursue the following actions to address the issues raised above. The EU strategy is founded in the principle of avoiding unnecessary interferences with ports that perform well, helping ports lagging behind to implement good practices and sound managerial approaches while fully respecting diversity and particular circumstances.

3.1. Connect ports to the trans-European network

More integrated infrastructure planning, consistent investment strategies and efficient EU funding will be possible in 2014-2020 under the new TEN-T guidelines, the Connecting Europe Facility and the new approach of the Structural Financial Instruments.

Use of the new TEN-T planning instruments

The new TEN-T guidelines have identified the multimodal core network on the basis of an objective methodology¹³. Ports play an important role in this methodology, as they define nodes which are connected by multimodal core links.

The TEN-T proposal includes 319 ports, 83 in the core network and 236 in the comprehensive network. The new core network corridors are the tools which will help develop the core network by 2030 and they start or end in core ports¹⁴. Maritime transport infrastructures of the TEN-T have certain requirements, in particular:

- Connection of TEN-T ports with railway lines, roads and, where possible, inland waterways;
- Availability of at least one terminal in the port open to all operators in a non-discriminatory way and applying transparent charges; and
- Adequacy of sea canals, port fairways and estuaries for connecting adjacent seas or providing access from the sea to maritime ports.

Core TEN-T ports also have to ensure that alternative clean fuels are available in their ports.

Action 1

Particular consideration will be given to projects corresponding to investments identified in the future corridor development plans to be defined by the Coordinators within corridor structures in 2014 as foreseen in the guidelines for the development of the TEN-T.

In the governance of corridors which will be set-up in the framework of guidelines for the development of the TEN-T, ports will be encouraged to act as enablers of inter-modality, for instance by taking the necessary arrangements in order to provide information on traffic flows allowing the better organisation of intermodal logistics.

Target EU funding

Until now, due to a lack of prioritisation and clear criteria EU funding for ports has lacked focus and insufficient attention has been given to the coordination with hinterland access infrastructure.¹⁵

¹² For more details see SWD(2013)181 impact assessment

¹³ See http://ec.europa.eu/transport/themes/infrastructure/doc/web_methodology.pdf

¹⁴ The alignment of the corridors is proposed in the Connecting Europe Facility (COM(2011)650)

¹⁵ From the TEN-T budget €244.6 million was granted to ports from 2007 to 2012, approximately 4% of the total TEN-T budget available. Of this, 58% was devoted to develop port capacity, 27 % to develop

In order to be eligible for funding for the period 2014-2020¹⁶, the regulation establishing the Connecting Europe Facility (CEF) requires ports to belong to the core network or to a Motorway of the Sea linking a port to the core network. It also places importance on the robust cost/benefit analysis of projects. Finally, it introduces new financial instruments like risk-sharing instruments and enhancement mechanisms to project bonds which may be of particular interest to public-private partnerships in ports.

The Commission is considering other elements on which to base its funding in the port sector. Firstly, it will follow up on the recommendations of the European Court of Auditors¹⁷ and check that efficient connections to the European, national and regional levels exist or are planned.

When allocating EU support, in particular under CEF, the added value of the project for attaining the objectives of the EU Transport Policy will be taken into account, including the rules on sound use of scarce public resources and respect of the Single Market core values.

Action 2

Attention will be given to projects which contribute to the coordinated development and management of ports, rail and inland waterways infrastructures and those which enhance port and shipping environmental performances.

The Commission will consider whether to propose to take into account issues such as early application of the provisions set out in the Regulation proposed in parallel to this Communication¹⁸, the quality of the social climate, and if the port has an environmental management strategy.

In partnership with the Member States, the Commission will strengthen the alignment of transport projects funded under the Structural and Cohesion Funds with the TEN-T, promoting priority to projects concerning port access and hinterland connections. The wider impact on the distribution of traffic between ports will be considered. The same approach will be taken with other sources of EU funding, such as loans available through the EIB and other EU lending facilities.

3.2. Modernise port services

Optimisation of port services and operations would result in a number of TEN-T ports being able to handle or attract more cargo and passengers and obtain significantly higher performance with the existing infrastructure, thereby reducing the need for funding.

Fair market access

The quality and efficiency of port services are essential for the overall performance of the port. Typically¹⁹, total port costs can account for a significant fraction of the total costs associated with the logistics chain. For some trades in traditional ports, costs of ports and ports terminal operation may exceed 30% of the total door-to-door logistic costs. In terms of

access to the hinterland and 15% to green technology. As regards cohesion funding, the Court of Auditors has been particularly critical of the lack of coordination with hinterland access.

¹⁶ Commission has presented its proposals for the 2014-2020 Financial Framework in June 2011 (COM(2011)500). Negotiations on the Multiannual Financial Framework are on-going. The funding will be covered within the financial envelopes agreed by the budgetary authority and the relevant legislative acts.

¹⁷ Special Report No 4 of 2012 of the European Court of Auditors: "using structural and cohesion funds to co-finance transport infrastructures in seaports: an effective investments?"

¹⁸ In particular the provisions applying as from 1 July 2025.

¹⁹ There are important variations depending on the port, type of trade, etc. See SWD(2013)181 Impact Assessment.

internal reparation of costs, port infrastructure charges represent between 5-10%, technical-nautical services between 10-15%, cargo-handling between 45-60% and other charges and ancillary services between 10-30%. Historically, port services have operated within frameworks characterised by exclusive rights or *de facto* monopolies of a public or private nature. Restrictions to the freedom to provide service are acceptable only when justified by objective reasons, such as the lack of space in ports or reasons of public service, and as long as they do not lead to abuses and are compliant with the TFUE. However, in such cases the providers of port services should be designated according to a procedure which ensures transparency, equal access and an efficient use of public resources.

The Regulation proposed in parallel to this Communication, which shall apply without prejudice to the Directives on Concessions and on Public Contracts, establishes the freedom to provide services in ports, except for cargo handling and passenger services. In cases of a limitation in the number of providers of port services, the provider shall be designated after an open, transparent and non-discriminatory procedure. The provision of port services by in-house operators, i. e. the port authority or the administration is only authorised in case of public service obligations. In such cases, internal operators are confined to provide services to their port system.

The port sector is a global business. The EU and its Member States have already made commitments via international agreements to open up market access to port services on fair and reciprocal basis. The Commission will monitor that it does not lead to a loss of control over EU strategic interests and will seek to promote a reciprocal market access with third countries.

Action 3

For cargo-handling and passenger terminal concessions, the Commission will ensure that the horizontal Directives on Concessions (soon to be adopted) and Public Contracts²⁰ are effectively applied. This should cover a part of the existing contractual arrangements between port authorities and port service providers and lead to a competitive and transparent award of port services. For contracts not covered by the Directives on Concessions and on Public Contracts, potential breaches of Treaty principles on transparent procedures and fair treatment as interpreted by the Court of the EU will be pursued by the Commission on a case by case basis.

The future Regulation on the access of third-country goods and services to the Union's internal market in public procurement proposed by the Commission in 2012 will be used as a lever to facilitate the negotiation of reciprocal access to non-EU markets for EU-based global players.²¹

Supervision of price and quality

If a port services provider operates under exclusive rights, there is a risk of market distortion, to detriment of its customers and/or competitors. Typical abuses are, e.g. discriminatory conditions, excessive and or predatory pricing practices and/or the refusal to supply to certain users of port services.

²⁰ Proposal for a Directive on the award of concession contracts (COM 2011) 897 final and Directive 2004/17/EC coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sector and Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

²¹ COM(2012)124 final, proposal for a Regulation on the access of third-country goods and services to the Union's internal market in public procurement and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries

The Regulation proposed in parallel to this Communication introduces common rules to ensure supervision by an independent authority of the port service charges levied by operators which have exclusive rights and which have not been designated through a procedure which is transparent and non-discriminatory.

In addition, port activities that constitute economic activities are subject to competition rules. Agreements that restrict competition and abuses of dominant position, as defined in Articles 101 and 102 TFEU respectively are prohibited. The Commission and national competition authorities may therefore assess the conduct of providers of port services operators.

Administrative simplification in the ports

The Commission has repeatedly recalled that administrative burden reduces the attractiveness of a port and affects its overall performance. The problem is particularly concerning intra-EU short sea shipping which must compete with other transport modes that are not subject to the same controls. In recent years, a number of EU initiatives to reduce red-tape in ports have been put in motion, such as the rationalisation of ships' reporting formalities to ports applicable since 19 May 2012. Those initiatives should be pushed forward and further supplemented for achieving bottom up, networked and consumer-driven port services.

Action 4

The Commission will further develop its initiatives on:

- *"Blue Belt" which aims at reducing the administrative burden for EU goods carried by vessels sailing between EU ports, to a level that is comparable to that of other transport modes, including by further simplifying customs procedures. This initiative is also a key action under the Single Market Act II²²;*
- *the further harmonized and coordinated implementation of Directive 2010/65/EU²³ by establishing guidelines on the "national single windows", due to be operational at the latest by 1 June 2015 ;*
- *"e-maritime" initiative to promote the use of electronic information for the reduction of administrative burden and doing business; and*
- *"e-Freight" initiative which aims to facilitate the exchange of information along multimodal logistics chains and which will contribute to improve port efficiency as ports are important multimodal platforms.*

The Regulation proposed in parallel to this Communication introduces new legal provisions to encourage the dialogue between the port's stakeholders (users, service providers, authorities, workers) and help achieve effective implementation of the actions mentioned above.

3.3. Attract investment to ports

Funding and financing transport infrastructure and facilities is one of the key challenges for the EU transport network in the years to come. Attracting both public and private funding requires a simple and clearly defined framework.

Transparent funding in ports

²² COM(2012)573 final of 3 October 2012

²³ 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.

The lack of transparency of public funding in ports creates uncertainties for investors looking to invest. To tackle this issue, the Regulation proposed in parallel to this Communication will introduce rules ensuring the transparency of financial relations between the public authorities and the port authorities. Greater financial transparency will also ensure a level playing field.

Clarify State aid rules

There are many reasons why a Member State may decide to give public funds to ports: for regional development purposes or for addressing market failures in cases where important port services present little interest for operators acting under market conditions. However, a pre-requisite for ensuring the sound use of Member State resources and avoiding unjustified competition distortions is the respect of the applicable State aid rules.

Action 5

The Commission is currently engaged in the modernisation of its State aid rules for all economic sectors. In this context, the Commission will clarify the notion of aid by the end of 2013 as regards to the financing of infrastructures, in particular in view of the evolving case law of the Court of Justice²⁴.

More efficient port infrastructure charges

Efficient pricing is a prerequisite to efficient port infrastructure investments. As a step towards more efficient pricing, the Regulation proposed in parallel to this Communication introduces a degree of autonomy enabling Port Authorities to establish the structure and level of port dues according to their own commercial and investment strategy. It is vital that prices are transparent and applied without discrimination.

International dimension

Some European ports have concerns about unfair competition from ports in third countries, in particular those close enough to provide competing transshipment services. The Commission remains convinced of the need for enhanced cooperation with neighboring countries, in order to achieve a sustainable transport system benefiting all EU partners based on the core principles of fair competition, transparent use of public funds and fiscal instruments and respect of social and environmental standards.

3.4. Promote the Social Dialogue

EU Ports employ more than 3 million people (directly and indirectly). Economic research has directly linked growth in port throughput with the creation of jobs in surrounding regions.

To succeed and adapt to the changing demands on the workforce, ports must offer good working conditions and improve the quality of the working environment to attract skilled personnel. Industrial disputes that affect relations may damage the image and competitiveness of ports and should be dealt with proactively. Good social climate and genuine social dialogue between the concerned parties is required.

Social Dialogue

Both the day-to-day efficiency and the long-term dynamics of port competition are influenced by the port labour regime. Depending on the type of terminal, port labour can represent a significant share of the operational costs for terminal operators.²⁵

²⁴ Cf case T-443/08 "Leipzig-Halle"

²⁵ 15%–20% at dry bulk terminals; 40%–75% at general cargo terminals

In 16 Member States, as is the case in other sectors, port labour regimes depart from general labour law²⁶. In some cases, those regimes may place restrictions that have an effect on the creation of new jobs or undermine the working environment in the port.

After a prolonged negotiation process, the social partners of the port sector have asked for the creation of a port sector Social Dialogue Committee in line with the competences recognised in the Union by Article 152 of the TFEU²⁷. This is the first time that such a dialogue has been requested in the sector and will allow for key issues, including those that may lead to contractual relations to be addressed. If the social partners so desire, they may then request jointly that agreements concluded by them at Union level be implemented by a Council decision on a proposal from the Commission in accordance with Article 155(2).

At this stage, the Commission does not propose to introduce particular provisions on port labour regimes. It should be stressed that the Social Dialogue at Union level supplements but does not replace social dialogue at national, local and corporate levels.

Action 6

In line with Articles 151 and 154 of the TFEU, the Commission is willing to facilitate the Social Dialogue at Union level by providing technical and administrative support. The EU social partners have already agreed rules of procedures and an open joint work programme and expect the Committee to be formally established on 19 June 2013.

While respecting the autonomy of the social partners, the Commission expects that the EU social partners will be in the capacity to tackle issues related to work organisation and working conditions.

The Commission in coordination with all the EU social partners foresees a review in 2016 that will assess the functioning and progress of the European Social Dialogue for the ports sector and the situation in respect of the provision of both cargo handling and passenger services.

Health, safety and training

Port work remains an occupation with a high risk of accidents and health implications for workers. It is essential to have a system in place to protect the health, safety and welfare of port workers and users, in line with applicable health and safety legislation.

Every port needs to develop working practices that safeguard the safety and health of port workers. This requires good cooperation and coordination between all employers and employees who operate within the port.

Technological changes and new transport and logistics needs will drive requirements for mastering innovative port operations and the need for employees with the right skills, training and qualifications to understand, master and exploit all the advantages provided by the new technologies.

Action 7

Under the 7th RTD framework programme for transport, the Commission will launch before the end of 2013 a concerted action project to examine health and safety, training

²⁶ Study on EU Port Labour (2013)

²⁷ See also the Commission Decision of 20 May 1998 on the establishment of Sectoral Dialogue Committees promoting the Dialogue between the social partners at European level (COM(1998)322 final)

and qualification challenges in EU ports. Social partners will be full involved in this action. The Social Dialogue committee for the port sector will be regularly consulted and informed on these issues.

3.5. Raise the environmental profile of ports

Port activities give rise to significant impacts in terms of emissions, noise, water and soil pollution and fragmentation of habitats. Ports located close to densely populated urban areas may often have to balance the development and management of port activities with the preservation of natural habitats and the quality of urban life.

The Commission published guidelines in 2011 on implementing the Birds and Habitats Directives in estuaries and coastal zones, with a particular focus on striking the right balance between environmental protection and port development.²⁸ Although it is for the European Court of Justice to interpret EU law, the application of the Commission's guidelines can provide a coherent framework for project developers and minimise the risk of litigation.

The Commission welcomes the initiatives taken by the port sector to promote excellence in environmental management and performance by publishing guides to good practices.²⁹ A number of ports have already adopted plans to better manage their footprint on the environment and such initiatives should be encouraged.

Ports should consider whether to reward operators who anticipate or exceed the application of mandatory environmental standards and promote the use of door-to-door low-carbon and energy efficient logistics chains, e.g. short sea shipping. Although existing schemes³⁰ introduced on a voluntary basis by a number of ports to raise their environmental image should continue to be supported, a more consistent application of such environmental variation of port infrastructure charges at a European or regional level would help to increase their effectiveness.

Action 8

To encourage a more consistent application of environmentally differentiated port infrastructure charges, the Commission will propose principles for environmental charging and promote the exchange of good practices by 2015.

The Commission is planning a review of the Directive on port reception facilities in 2013/2014 with the view to further improving the effectiveness and efficiency of the system.

3.6. Encourage innovation

Over recent years, the global port industry has changed significantly. Ports are becoming increasingly dependent on technological innovations across the entire logistics chain.

The competitiveness of European ports will depend on their ability to innovate in terms of technology, organisation and management. Their critical roles as multi-modal hubs require innovative and efficient ways of cross-modal connections and use of management tools in order to further increase their attractiveness.

Research can also be used as a way of addressing social concerns. These can range from health and safety risks for port workers (e.g. impacts of the fumigation of containers) to the

²⁸ http://ec.europa.eu/transport/modes/maritime/doc/guidance_doc.pdf
http://ec.europa.eu/transport/modes/maritime/doc/comm_sec_2011_0319.pdf

²⁹ ESPO Green guide

³⁰ Modulation based on the Environmental Ship Index scheme (Belgium, France, Germany and the Netherlands), on the Green Award certificate (Latvia, Lithuania, the Netherlands and Portugal), or through rebates linked to NOx/SOx emissions or via levying a sulphur fee (Sweden).

need to manage and reduce the impacts of port activities on the environment and the urban areas.

In the context of the implementation of the Horizon 2020 programme to support research, development and innovation from 2014 to 2020, the Commission will propose priority tasks where EU support could be envisaged.

4. CONCLUSION

Ports can contribute significantly to the economic recovery and long term competitiveness of European industries in world markets while adding value and jobs in all EU coastal regions. Ports will have a key role to play in the development of an efficient and sustainable trans-European network by diversifying transport choices and contributing to multimodal transport.

Today, the European Port Policy is at a cross-road. While some European ports perform well, structural problems regarding the insufficient connectivity to the hinterland, the lack of transparency in the use of public funds, market entry barriers, outdated governance models and excessive bureaucracy affect the performance of many other ports. It is high time to address those long standing problems.

In order to monitor the progress of the implementation of this reviewed European Port Policy, the Commission has initiated a project³¹ that will start before the end of 2013 to develop and collect a set of generic European indicators on the performance of ports.

The Regulation proposed in parallel to the European Parliament and Council is designed to tackle the key issues related to the market access to port services and the financial transparency and autonomy of ports. The Commission will provide feedback, in the form of a report, on the functioning and effect of the Regulation no later than three years after its entry into force.

The Commission will address the remaining issues by the following focused actions within its remit:

- fully use the new TEN-T guidelines and EU financial instruments to improve the connections of ports to their hinterland and promote the European Port Policy;
- monitor that existing EU law applicable to concession and ports is correctly applied;
- provide the necessary administrative and technical support to the Social Dialogue at Union level, with a stock taking of progress in 2016;
- present new initiatives to further simplify the administrative procedures in ports, notably customs procedures;
- promote environmental technologies and short sea shipping through common principles on the variation of port infrastructure charges.

The Commission will check progress against delivery of the policy objectives defined in this Communication, notably progress in developing multimodal connections to the port hinterland, modernising port services and attracting investments.

³¹ Under the 7th RTD framework transport programme – call for proposals 2013

LIST OF 319 KEY EU PORTS BY COUNTRY

Source: Commission TEN-T proposal, 19 October 2011.

This list, proposed by the Commission in October 2011, is subject to final approval by the European Parliament and Council.

MEMBER STATE	SEAPORT
BELGIUM	Antwerpen
	Gent
	Oostende
	Zeebrugge
	Σ (BE) 4
BULGARIA	Burgas
	Varna
	Σ (BG) 2
CYPRUS	Larnaka
	Lemesos
	Σ (CY) 2
GERMANY	Bremen, Bremerhaven Brake
	Brunsbuettel
	Cuxhaven
	Emden
	Hamburg
	Kiel
	Lübeck
	Nordenham
	Puttgarden
	Rostock
	Sassnitz
	Stade-Bützfleth
	Wilhemshaven
	Wismar
	Σ (DE) 16
	Aalborg
	Aarhus
	Branden
	København
	Ebeltoft

	Esbjerg
	Fredericia
	Frederikshavn
	Fur
	Gedser
	Hanstholm
	Helsingor
	Hirtshals
	Kalundborg
	Nordby
	Odense
	Rodby
	Ronne
	Sjælland Odde Ferry Port
	Spodsbjerg
	Tars (Nakskov)
	Vejle
DENMARK	Σ (DK) 22
	Heltermaa
	Kuivastu
	Parnu
	Paldiski South Harbor
	Rohuküla
	Sillamae
	Tallinn
	(Old City Harbour)
	(Muuga Harbour)
	(Paljassaare Harbour)
	Virtsu
ESTONIA	Σ (EE) 10
	Athinai (Piraeus)
	Chalkida
	Chania (Souda)
	Chios

	Elefsina
	Igoumenitsa
	Iraklion
	Kalamata
	Katakolo
	Kavala
	Kerkyra
	Kyllini
	Lavrio (Sounio)
	Mykonos
	Mytilini
	Naxos
	Paros
	Patras
	Rafina
	Rodos
	Santorini
	Skiathos
	Syros
	Thessaloniki
	Volos
GREECE	Σ (EL) 25
	A Coruña
	Algeciras (Bahía de Algeciras)
	Alicante
	Almería
	Arrecife
	Avilés
	Barcelona
	Bilbao
	Cádiz (Bahía de Cádiz)
	Carboneras
	Cartagena
	Castellón
	Ceuta
	El Hierro (La Estaca)
	Ferrol
	Gijón
	Huelva

	Ibiza Eivissa La Savina	
	Las Palmas	
	Los Cristianos	
	Mahón (Menorca)	
	Málaga	
	Melilla	
	Motril	
	Palma de Mallorca	
	Pasajes	
	Puerto Rosario	
	Sagunto	
	San Cibrao	
	San Sebastián de la Gomera	
	Santa Cruz de La Palma	
	Santander	
	Sevilla	
	Tarragona	
	Tenerife Santa Cruz	
	Valencia	
	Vigo	
SPAIN	Σ (ES)	38
	Eckero	
	Hamina-Kotka	
	Hanko	
	Helsinki	
	Kaskinen	
	Kemi	
	Kilpilahti (Skoldvik)	
	Kokkola	
	Maarianhamina	
	Oulu	
	Pietarsaari	
	Pori	
	Rauma	
	Rautaruukki/Raahe	
	Turku-Naantali	

FINLAND	Σ (FI)	17
	Ajaccio	
	Bastia	
	Bayonne	
	Bordeaux	
	Boulogne	
	Brest	
	Caen	
	Calais	
	Cayenne	
	Cherbourg	
	Dieppe	
	Dunkerque	
	Fort de France	
	Guadeloupe	
	La Rochelle	
	Le Havre	
	Lorient	
	Marseille	
	Nantes Saint-Nazaire	
	Nice	
	Port Réunion	
	Roscoff	
	Rouen	
	Sète	
	Saint-Malo	
	Toulon	
FRANCE	Σ (FR)	26
	Cork	
	Dublin	
	Limerick Shannon-Foynes	
	Rosslare Europort	
	Waterford	
IRELAND	Σ (IE)	5
	Ancona A. Falconara)	
	Augusta	
	Bari	
	Brindisi	
	Cagliari	

	P. Foxi
	Carloforte
	Chioggia
	Civitavecchia
	Gaeta
	Gela
	Genova
	Gioia Tauro
	Golfo Aranci
	La Maddalena
	La Spezia
	Livorno
	Marina di Carrara
	Messina
	Milazzo
	Monfalcone
	Napoli
	Olbia
	Palau
	Palermo
	Piombino
	Porto Levante
	Porto Torres
	Portoferraio
	Portovesme
	Ravenna
	Reggio Calabria
	Roma
	Salerno
	Fiumicino
	Savona - Vado
	Siracusa
	Taranto
	Trapani
	Trieste
	Venezia, Padova
ITALY	Σ (IT) 39
LITHUANIA	Klaipeda
	Σ (LT) 1
	Liepaja
	Riga
	Ventspils
LATVIA	Σ (LV) 3

	Cirkewwa
	Marsaxlokk
	Mgarr
	Valletta
MALTA	Σ (MT) 4
	Amsterdam
	Beverwijk
	Delfzijl/Eemshaven
	Den Helder
	Dordrecht
	Eemshaven
	Groningen
	Harlingen
	Moerdijk
	Rotterdam - Den Haag
	Terneuzen, Vlissingen
	Velsen/IJmuiden
	Vlaardingen
NETHERLANDS	Σ (NL) 14
	Gdąnsk, Gdynia
	Police
	Szczecin, Świnoujście
POLAND	Σ (PL) 5
	Aveiro
	Canical
	Funchal
	Horta
	Lajes das Flores
	Lisboa
	Ponta Delgada
	Portimao
	Porto Leixões
	Porto Santo
	Praia da Vitoria
	Setubal
	Sines
PORTUGAL	Σ (PT) 13
	Brăila

	Constanța
	Galați
	Sulina
	Tulcea
ROMANIA	Σ (RO) 5
	Gavle
	Göteborg
	Grisslehamn
	Halmstad
	Helsingborg
	Kapellskär
	Karlshamn
	Karlskrona
	Luleå
	Malmö
	Norrköping
	Oskarshamn
	Oxelosund
	Stenungsund
	Stockholm Nynäshamn
	Stromstad
	Sundsvall
	Trelleborg
	Umea
	Varberg
	Västeras
	Visby
	Ystad
SWEDEN	Σ (SE) 24
	Koper
SLOVENIA	Σ (SI) 1
	Aberdeen
	Belfast
	Bristol
	Cairnryan
	Cardiff
	Cromarty Firth
	Dover/Folkestone
	Edinburgh Forth
	Felixstowe/Harwich
	Fishguard

	Glasgow Clyde	
	Glensanda	
	Goole	
	Grimsby/Immingham	
	Heysham	
	Holyhead	
	Hull	
	Ipswich	
	Larne	
	Leeds, Sheffield	
	Liverpool	
	London	
	London Gateway	
	Londonderry	
	Manchester	
	Medway	
	Milford Haven	
	Newport	
	Orkney	
	Plymouth	
	Poole	
	Port Salford	
	Port Talbot	
	Ramsgate	
	River Hull Barton- upon-Humber	
	Southampton, Portsmouth	
	Stornoway	
	Stranraer	
	Sullom Voe	
	Teesport	
	Tyne	
	Ullapool	
	Warrenpoint	
UNITED KINGDOM	Σ (UK)	43

Source: Commission proposal, 19 October 2011