

# Provision of port services and financial transparency of ports

2013/0157(COD) - 23/05/2013 - Legislative proposal

**PURPOSE:** to establish a framework on market access to port services and financial transparency of ports.

**PROPOSED ACT:** Regulation of the European Parliament and of the Council.

**ROLE OF THE EUROPEAN PARLIAMENT:** the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

**BACKGROUND:** there are more **1200 sea ports** in Europe. Port activities represent up to 3 million (direct and indirect) jobs in the 22 maritime Member States. 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 \(TEN-T\)](#).

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.

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 proposal fits within the policy announced by the Commission in the [White Paper on Transport \(2011\)](#). It complements other initiatives, such as the [proposal for a Directive on the awards of concession contracts](#) which applies to concession contracts in ports.

In the Communication on the [“Single Market Act II: Together for new growth”](#), the Commission 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.

**IMPACT ASSESSMENT:** the impact assessment identified **five operational objectives related to the two main challenges:**

**1. Modernise port services and operations:** (i) clarify and facilitate access to the port services market; (ii) prevent market abuse by designated port service providers; and (iii) improve coordination mechanisms within ports.

**2. Create framework conditions to attract investments in ports:** (i) make the financial relations between public authorities, port authorities and providers of port services transparent; and (ii) ensure autonomously set and transparent port infrastructure charges.

**The preferred option is that of regulated competition and port autonomy.**

The impact assessment highlights the potential benefits in terms of costs savings (EUR 10 billion up to 2030), the development of short sea shipping and reduction of road congestion and creation of jobs.

**LEGAL BASIS:** Article 100 (2) of the Treaty on the Functioning of the European Union (TFEU).

**CONTENT:** the proposed Regulation seeks to establish: (a) a clear a clear framework for access to the market of port services; and (b) common rules on the financial transparency and charges to be applied by managing bodies or providers of port services.

**Scope:** the Regulation shall apply to all seaports listed in the Commission's proposal for a Regulation on the trans-European Transport Network Guidelines.

**Freedom to provide services:** 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 Commission.

**Limitation on the number of service providers:** 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: (i) either in the case of space constraints or reservation which, if clearly documented in a formal port development plan, can justify limiting the number of operators active in the port perimeter or (ii) in the case of a public service obligation imposed on an operator and for which the intention should be clear and publicly available.

**Public service obligations:** 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.

**Employees' rights:** 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.

**Regulated competition:** 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.

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.

**Transparent port infrastructure charges:** 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.

**Advisory committee:** a port users' advisory committee should be set up in every port. This committee would 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 should be consulted on the structure and the level of the port infrastructure charges and, in certain cases, the port service charges.

**Consultation of stakeholders:** 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.

**Monitoring and supervision:** 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.

**BUDGETARY IMPACT:** the proposal has no impact on the budget of the European Union.

**DELEGATED ACTS:** the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.