

Provision of port services and financial transparency of ports

2013/0157(COD) - 14/12/2016 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 546 votes to 140, with 22 abstentions, a legislative resolution on the 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.

The issue had been sent back to the committee for review at its 8 March 2016 plenary session.

Parliament's position adopted at first reading following the ordinary legislative procedure amended the Commission proposal as follows:

Subject matter and scope: this Regulation establishes a framework for the provision of port services and common rules on financial transparency and on port service and port infrastructure charges.

This Regulation should give Member States the possibility to decide whether or not to apply this Regulation to maritime ports of the comprehensive network located in the outermost regions.

Parliament noted that the Regulation should:

- **in no way prejudice the rules in Member States** governing the system of property ownership applicable to maritime ports, and should allow for different port structures in Member States;
- **not impose a specific model for the management** of maritime ports and does not affect in any way the competence of Member States to provide, in conformity with Union law, non-economic services of general interest.

Different port management models are possible, provided that the framework for the provision of port services and the common rules on financial transparency set out in this Regulation are respected.

Organisation of port services: access to the market for the provision of port services in maritime ports may, in accordance with this Regulation, be subject to: (i) minimum requirements for the provision of port services; (ii) limitations on the number of providers; (iii) public service obligations; (iv) restrictions related to internal operators.

Member States may decide by national law not to impose any of the conditions on one or more categories of port services.

The terms of access to the facilities, installations and equipment of the port shall be fair, reasonable and non-discriminatory.

The Chapter on the organisation of port services **should not apply to the provision of cargo-handling, passenger services or pilotage**.

Minimum requirements for the provision of port services: these requirements concern:

- the **availability of the relevant port service** to all users, at all berths and without interruptions, day and night, throughout the year;

- **compliance with requirements on maritime safety** or the safety and security of the port or access to it, its installations, equipment and workers and other persons;
- **compliance with obligations in the field of social and labour law** that apply in the Member State of the port concerned, including the terms of applicable collective agreements, manning requirements and requirements relating to hours of work and hours of rest for seafarers, and with applicable rules on labour inspections;
- the **good repute** of the port service provider.

The minimum requirements shall be: (i) **transparent, objective, non-discriminatory, proportionate, and relevant** to the category and nature of the port service concerned; (ii) complied with until the right to provide a port service expires.

Procedure to ensure compliance with the minimum requirements: the managing body of the port, or the competent authority, shall grant or refuse the right to provide port services on the basis of the minimum requirements within a **reasonable period**, which in any event shall **not exceed four months**, from receiving a request for the granting of such a right and the necessary documents. Any such refusal shall be duly justified.

Limitations on the number of providers of port services: the managing body of the port, or the competent authority, may limit the number of providers of port services for a given port service for one or more of the following reasons:

- the scarcity or reserved use of land or waterside space;
- the absence of such a limitation is obstructing the performance of **public service obligations** as well as the need to ensure safe, secure or environmentally sustainable port operations;
- **the characteristics of the port infrastructure** or the nature of the port traffic are such that the operations of multiple providers of port services in the port would not be possible;
- where it has been established that a port sector or sub-sector, together with its port services, within a Member State carries out an activity that is directly exposed to competition.

The procedure for choosing providers of port services and its result should be made public and should be **non-discriminatory, transparent** and open to all interested parties.

If the managing body of a port, or the competent authority, provides port services itself or through a legally distinct entity which it directly or indirectly controls, measures should be taken to avoid conflicts of interests and to ensure fair and transparent market access to port services when the number of providers of port services is limited.

Public service obligations: Member States may decide to impose public service obligations related to port services on providers of port services and may entrust the right to impose such obligations to the managing body of the port, or to the competent authority, in order to ensure at least one of the following:

- the availability of the port service to all port users, at all berths, without interruption, day and night, throughout the year;
- the availability of the service to all users on equal terms;
- the affordability of the service for certain categories of users;
- the safety, security or environmental sustainability of port operations;
- the provision of adequate transport services to the public; and
- territorial cohesion.

Employees' rights: Parliament stated that the managing body of the port, or the competent authority, shall require the designated provider of port services to grant staff working conditions in accordance with applicable obligations in the field of **social and labour law** and to comply with social standards as set out in Union law, national law or collective agreements.

Parliament introduced a new Article stipulating that providers of port services shall ensure that employees receive the **necessary training** to acquire the knowledge which is essential for their work, with particular emphasis on health and safety aspects, and that training requirements are regularly updated to meet the challenges of technological innovation.

Financial transparency: Parliament specified where the managing body of a port in receipt of public funds provides port services or dredging itself, or another entity provides such services on its behalf, it shall **keep the accounts** for that publicly funded port service or dredging **separate** from those for its other activities.

Port infrastructure charges: the amended text stipulates **port infrastructure charges may vary, in accordance with the port's own economic strategy** and its spatial planning policy, in relation to, inter alia, certain categories of users. The criteria for such a variation shall be transparent, objective and non-discriminatory, and shall be consistent with competition law, including rules on State aid.

Consultation of port users and other stakeholders: the managing body of the port shall, in accordance with applicable national law, consult port users on its charging policy. Such consultation shall include any substantial changes to the port infrastructure charges and port service charges in cases where internal operators provide port services under public service obligations.

The providers of port services shall make available to port users **adequate information** about the nature and level of the port service charges.

The managing body of the port shall, in accordance with applicable national law, consult port users and other relevant stakeholders on essential matters within its competence regarding: (i) environmental matters; (ii) spatial planning; and (iii) measures to ensure safety in the port area, including, where appropriate, health and safety of port workers.

Handling of complaints: each Member State shall ensure that an effective procedure is in place to handle complaints arising from the application of this Regulation for its maritime ports covered by this Regulation. Member States shall ensure that there is effective **functional separation** between the handling of complaints, on the one hand, and the ownership and management of ports, provision of port services and port use, on the other hand.

Transitional measures: port service contracts concluded before the date of adoption of this Regulation which are not limited in time, or have similar effects, shall be amended in order to comply with this Regulation by 1 July 2025.