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**NOTE**

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| From: | General Secretariat of the Council |
| To: | Delegations |
| No. prev. doc.: | 11617/14 TRANS 354 MAR 111 FIN 465 CODEC 1572 |
| No. Cion doc.: | 10154/13 TRANS 272 MAR 62 FIN 300 CODEC 1234 |
| Subject: | 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 |

In view of the Shipping Working Party meeting on 1 September 2014, delegations will find attached a modified Presidency compromise proposal.

Compared to the previous document, deleted text is marked in ~~strikethrough~~ and new text in **bold**.

General scrutiny reservation and language reservation: all delegations.

**ANNEX**

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 Committee[1],

Having regard to the opinion of the Committee of the Regions[2],

Acting in accordance with the ordinary legislative procedure,

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1 OJ C 327, 12.11.2103, p. 111.
2 OJ C 114, 15.4.2014, p. 57.

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 growth[3], 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 maritime ports 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.

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[3] COM(2012) 573 final (3.10.2012).

(4) The overwhelming majority of Union maritime traffic transits through the maritime ports of the trans-European transport network. In order to achieve the aim of this [Regulation] in 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 2014/23/EU of the European Parliament and of the Council[4], 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.

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[4] Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1).

(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 interest[5], Commission Regulation (EU) No 360/2012[6] and the European Union framework for State aid in the form of public service compensation[7].

(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 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.

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5 OJ L 7, 11.1.2012, p. 3.

6 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 interest (OJ L 114, 26.4.2012, p. 8).

7 OJ C 8, 11.1.2012, p. 15.

(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] should 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[8].

(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 Directive 2014/23/EU. 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 maritime ports 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[9] without prejudice to its scope.

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[8] Council Directive 2001/23/EC of 12 March 2001 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 businesses (OJ L 82, 22.3.2001, p. 16).

[9] Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (OJ L 318, 17.11.2006, p.17).

(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 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 waterborne 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[10].

(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

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[10] 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 powers (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][11] establishes:

   (a) a framework for **market** access to ~~the market of~~ port services;

   (b) common rules on financial transparency and on port service and port infrastructure charges.

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[12]:

   (a) bunkering;

   (b) cargo handling;

   (c) dredging;

   (d) mooring;

   (e) passenger services;

   (f) collection of ship-generated waste and cargo residues[13];

   (g) pilotage, and

   (h) towage.

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[11] PCY has taken good note of the positions of Member States on the choice of the legal form.

[12] BE and DE suggest deleting "on the waterway access to and from the port" (*in this context, the PCY draws the attention to the changes to the definition in point 18 of Art. 2*); BE and MT suggest adding "if they are organised as an economic activity".

[13] FR suggests the deletion in case the reference to core ports would not be included.

3. This [Regulation] shall apply to all maritime ports of the [14]trans-European transport network, as listed in Annex II of Regulation (EU) No 1315/2013 of the European Parliament and of the Council[15].

4. Member States may also apply this [Regulation] to other maritime ports. When Member States decide to apply this [Regulation] to other maritime ports they shall notify their decision to the Commission.

Article 2

Definitions

For the purposes 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" 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[16] and directly related to the transporting of the cargo, but excluding, unless otherwise determined by Member States, warehousing, stripping, repackaging or any other value added services related to the handled cargo;[17]

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14 FR, supported by UK, MT and PL, suggests inserting the word "core". DK supports the current text.

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

16 NL suggests putting a full stop after "terminal".

17 UK suggests deleting the definition; at least delete, at this point, "and temporary storage". Moreover suggests to change “warehousing” with “storage”.

2a. "competent authority" means any public or private body which, ~~whether or not in conjunction with other activities, carries out~~ **at a regional or national level, is entitled to carry out** under national law or instruments activities related to the organisation **and** supervision ~~and management~~ of port ~~services~~ **activities**, **in conjunction or alternatively** to the managing body of the port;[18]

3. "dredging" means the removal of sand, sediment or other substances from the bottom of the waterway access to a port or within the port, **including the disposal of the removed materials,** 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. **[…]**

4a. ~~"port facility" means a location where the ship/port interface takes place; this includes areas such as anchorages, waiting berths and approaches from seaward, as appropriate;~~

5. "managing body of the port" means any public or private body[19] which, whether or not in conjunction with other activities, has as its objective under national law or instruments or is empowered by such law or instruments to carry out, **at a local level,** 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;[20]

6. "mooring" means the berthing and un-berthing services required for a waterborne vessel[21] operated in the port or in the waterways access to the port;

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18 Reservation: BE and FR. DE suggests redrafting the definition, introducing the concept of "jurisdiction".

19 LT suggests "body or bodies".

20 Scrutiny reservation: SE.

21 MT suggests deleting the words after "vessel".

7. "passenger services" means the organisation and handling of passengers, their luggage and their private vehicles 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 waterborne vessel in the waterways access to the port or safe navigation within the port;[22]

9. "port infrastructure charge" means a charge ~~collected~~ **levied** for the direct or indirect benefit of the managing body of the port or the competent authority for the use of facilities and services, including the waterways giving access to those ports, as well as access to the processing of passengers and cargo[23];

10. "collection of ship-generated waste and cargo residues"[24] means the receipt into 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[25];

11. "port service charge" means a charge ~~collected~~ **levied** 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 services and a managing body of the port or a competent authority whereby this body designates a provider of port services to provide port services following a procedure to establish the number of providers of port services, **without prejudice to the form of designating port service providers;**

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22 NL proposes the following text: "means the guidance service of a waterborne vessel by a pilot or a pilotage station in order to allow the vessel to navigate safely on the port access channels and within the port".

23 LV and UK suggests deleting the words "as well as access to the processing of passengers and cargo".

24 FR prefers going back to the initial concept, i.e. "port reception facility".

25 Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues (OJ L 332, 28.12.2000, p. 81)**.**

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 or activities of 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;

16. "maritime port" means an area of land and water made up of such works and equipment so as to permit, principally, the reception of waterborne vessels, their loading and unloading, the storage of goods, the receipt and delivery of those 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 or safe navigation within 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, [where such waterway access is managed or administered by the port].[26]

[26] DE, supported by BE, proposes replacing the wording following “fjords” by the following: “if such waterway access falls into the legal competence of the managing body of the port.” ES and NL suggest deleting the last part of the definition.

CHAPTER II – Market access

Article 3

Freedom to provide services

1. Freedom to provide services in maritime ports 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. The terms of market access to port facilities, **installations and equipment** shall be fair, reasonable and non-discriminatory.[27]

Article 4

Minimum requirements for the provision of port services

1. The managing body of the port or the competent authority 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[28] relate to one or several of the following subject-matters:

   (a) the professional qualifications of the provider of port services, its personnel or the natural persons who effectively and continuously are managing the activities of the provider of port services;

   (aa) the ~~adequate~~ financial capacity of the provider of port services;

   (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~~ **required** level;

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[27] DK and FI suggest reinserting "essential".

[28] DE, FR, IE, MT and UK prefer an open list. DK, EL, NL and COM support the current text.

(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;

(da) the availability of the port service to all users[29];

~~(db)~~ […]

(dc) the availability of the service without interruption during the day, the night, the week and the year.

3. The minimum requirements shall be transparent, non-discriminatory, objective, **proportionate,** and relevant to the category and nature of port services concerned.

4. […]

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 or by the competent authority within [24] months from the entry into force of this [Regulation] or, in the case of minimum requirements being applicable after that date, at least three months[30] 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.

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29 NL and MT suggest merging points (da) and (dc).

30 UK considers that individual ports should be able to decide on a case-by-case basis.

Article 5

Procedure to ensure compliance with the minimum requirements

1. The managing body of the port or the competent authority shall treat providers of port services in a transparent, objective, non-discriminatory and proportionate manner.

2. 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 established in accordance with Article 4 within a reasonable time, and in any event not exceeding six months[31], from receiving a request for the granting of such a right and the necessary documents.

3. […]

3a. Any limitation to the duration of the right to provide a port service shall be duly justified **and** in accordance with paragraph 1. Furthermore, any refusal shall be justified on the basis of the minimum requirements of Article 4(2).

**3b. The right to provide a port service continues as long as the minimum requirements established in accordance with article 4(2) are complied with; any termination shall be duly justified and in accordance with paragraph 1.**

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 or the competent authority may limit the number of providers of port service**s** for a given port service for one or several of the following reasons[32]:

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31 COM, supported by DK and EL, considers that six months is too long. Scrutiny reservation: BE and FR.

32 DE and FR suggest an open list. MT suggests introducing the possibility to add elements to the list through implementing acts.

(a) the scarcity or reserved use of land or waterside space provided that the managing body **of the port** or the competent authority can demonstrate that the land or waterside space is essential for the provision of the port service and that the limitation is in accordance with the decisions or plans as agreed by the managing body of the port and where appropriate any other public competent authorities according to the national legislation[33];

(b) the absence of limitation obstructs the performance of the public service obligations as provided for in Article 8;[34]

(ba) **the absence of limitation leads to a** financial compensation for the public service obligations **which** is excessively high for the managing body of the port or the competent authority, or for the port users;[35]

(bb) the absence of limitation obstructs the need to ensure safe, secure or environmentally sustainable port operations;

(bc) the characteristics of the traffic do not enable multiple providers of port services to operate in economically satisfactory conditions in the port.[36]

This paragraph does not preclude the possibility for Member States to impose public service obligations in case of unlimited access to port services.

2. The managing body of the port or the competent authority shall publish any proposal to apply paragraph 1 at least three 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 or the competent authority shall publish the adopted decision.

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33 UK, supported by FR, suggests deleting all text after the first "waterside space".

34 NL considers that point (b) might lead to legal uncertainty.

35 NL, RO, FI, UK consider the expression “excessively high” too vague.

36 NL, FI and COM consider that the absence of a viable market is not in itself a sufficient condition for a limitation. IE and UK support the current text.

4. When a managing body of a port or a competent authority provides port services itself or through a legally distinct entity which it directly or indirectly controls, the Member State shall take necessary measures to avoid[37] conflicts of interest, such as entrusting the adoption of the decision limiting the number of providers of port services to a relevant national authority which is independent from the managing body of the port or the competent authority.[38]

Article 7

Procedure for the selection of providers of port services in case of limitation of their number

1. In the case of limitation of the number of providers for a port service in accordance with Article 6, the managing body of the port or the competent authority shall follow a selection procedure which shall be open to all interested parties, non-discriminatory and transparent.

1a. The managing body of the port or the competent authority shall make available to all interested parties information concerning the selection procedure and an indicative completion deadline, as well as any modification of such procedure or deadline.[39]

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 2014/23/EU shall apply.[40]

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37 NL suggests “prevents”. FR prefers the current text.

38 Reservation: IE, BE and UK propose to keep the initial text of the Commission and to add at the end of the text: "unless any of the reasons listed in paragraph 1 justifies a limitation to a single provider.".

39 NL, MT, EL proposes deleting §§ 1a and 4a (redundant).

40 DE, FR, MT, EL and LT suggest deleting references to the concession Directive (deletion of §§ 2, 3 and 5). *PCY suggests specifying the relevant articles of the Directive which would apply. Alternatively FR, DE, EL and LV suggest to copy and paste the relevant provisions of the directive*

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 2014/23/EU.

4. The selected provider or providers, on one side, and the managing body of the port or the competent authority, on the other, shall conclude a port service contract.

4a. The duration of the port service contract shall be limited. The managing body of the port or the competent authority shall determine that duration on the basis of the nature of the service to which the contract relates, on the period needed to recover the initial investment and the investments made during the length of the contract.

5. For the purposes of this [Regulation], a substantial modification within the meaning of Directive 2014/23/EU 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[41].

7. This [Regulation] is without prejudice to Directive 2014/23/EU, Directive 2014/25/EU of the European Parliament and of the Council[42] and Directive 2014/24/EU of the European Parliament and of the Council[43].

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41 UK proposes "Paragraphs 1 to 5 of this Article shall not apply in cases when the managing body of the port is the sole provider". IE positive scrutiny

42 **Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).**

43 **Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3/2014, p. 65).**

Article 8[44]

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[45]:

   (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;

   (ca) the safety, security or environmental sustainability of port operations.

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[46] designate the authorities within their territory who are competent to impose such public service obligations. The managing body of the port may be such an authority.

4. When the authority designated in accordance with paragraph 3 is different from the managing body of the port, that 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.

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44 Reservation: UK.
45 FR prefers an open list.
46 LT, LV, MT prefer "may".

5. If a Member State decides to impose public service obligations, for the same service, in all its maritime ports covered by this [Regulation], it shall notify those obligations to the Commission.[47]

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 authority designated in accordance with paragraph 3 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 two years. During that time period, that authority shall either launch a new procedure to select a provider of port services in accordance with Article 7 or shall apply Article 9.

Article 9

Internal operator

1.[48] In the cases provided for in Article 6(1)[49], the managing body of the port or 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, ~~including an agent [such as a pilot] employed or commissioned by the managing body of the port or the competent authority itself~~. In such ~~a~~ case**s**, the provider of port services shall be considered as an internal operator for the purposes of this [Regulation].

2. The managing body of the port or 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.

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47 Reservation: FR (too heavy procedure).

48 BE proposes to use the EP amendments for §§ 2 and 3.

49 ES proposes to add par (b) and (ba).

3. The internal operator shall be confined to perform the assigned port service only in the port or ports for which the assignment to provide the port service has been attributed to him.

4. If a Member State decides to apply paragraph 1 in all its maritime ports covered by this [Regulation], it shall inform the Commission.

5. This Article is without prejudice to Directive 2014/23/EU[50].

**Article 9a**

**Pilotage**

**1. Without prejudice to Article 6, a managing body of a port or a competent authority may limit the number of providers of pilotage on the ground of public service obligations as defined in Article 8(1) and (2).**

**2. In such a case a managing body of a port or a competent authority may entrust directly such obligations to cooperatives, association or grouping of agents commissioned or employed by the managing body of the port or the competent authority provided that these agents are selected through a transparent procedure and that the managing body of the port or the competent authority exercises a control similar to that referred to in Article 9(2).**

Article 10

Safeguarding of employees' rights[51]

1. This [Regulation] shall not affect the application of the social and labour rules of the Member States.

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[50] NL objects the added value of this paragraph.

[51] UK suggests a recital instead.

2. Without prejudice to national and Union law including collective agreements between social partners, the managing bodies of the port[52] or the competent authority may[53] 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 outgoing provider of port services, to grant staff previously taken on by the outgoing 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 or competent authorities 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**s**

Member States may decide[54] not to apply this Chapter and the transitional provisions of Article 24 to dredging[55], ~~[~~pilotage,[56]~~]~~ cargo handling[57] or passenger services[58].

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52 LT would like to delete all references to "managing body" in this Article.
53 DE proposes “shall”
54 NL prefers a solution which ensures a uniform application of the Regulation.
55 Exclude dredging from the scope: BE, DE, DK, EE, ES, FR, HR, LT, LV, PL, SI, UK. Exclude dredging from Article 11 and keep it in the scope of the Regulation: EL
56 Exclude pilotage from the scope: DE, FR, LT, LV, PL, SE, UK. Exclude pilotage from Article 11 and keep it in the scope of the proposal: DK, EL, ES, IE, NL, PT, COM.
57 Exclude cargo handling from the scope: UK, EL and PL.
58 Exclude passenger services from the scope: EL

CHAPTER III – Financial transparency and autonomy

Article 12[59]

Transparency of financial relations[60]

1. The financial relations between public authorities and a managing body of a port[61] that receives public funds shall be reflected in a transparent way in the accounts[62] 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 a port[63] that receives public funds provides port services itself, it shall keep the accounts of that publicly funded activity or investment 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.

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59 FR proposes deletion of art 12.

60 IE, MT and UK, suggest adding "for ports in receipt of public funding".

61 NL, MT, EL suggest adding: "or other entities that provide port services".

62 DE proposes the following change: "…transparent way by information in a separate statement in order to…"

63 NL and EL suggest adding: "or another entity on their behalf provides a port service and public funding are made available to provide that service"

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, the granting of financial advantages by forgoing profits and recovery of sums due 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 for five years from the end of the fiscal year to which the information refers.

5. The managing body of the port shall, ~~in the event of formal complaint and~~ upon request, make available to the relevant national authority ~~and the Commission~~ the information referred to in paragraphs 1 and 2 and 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] in line with competition rules[64]. The information shall be transmitted within [two[65]] months from the date of the request. **Such information shall be also made available to the Commission, [in the event of formal complaint and][66] upon request to the relevant national authority**.

6. The managing body of the port that has 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.

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64 IE, NL and UK ask for the addition of a reference to State aid rules.

65 CY and LT ask for at least 3 months.

66 Compliance with Directive 2006/111 to be assessed.

*Article 13*

*Port service charges*

1. The charges for the services provided by an internal operator as referred to in Article 9(1) and the charges levied by providers of port services as referred to in points (b) and (ba) of Article 6(1) shall be set in a transparent and non-discriminatory way. Those charges shall not be disproportionate to the cost of the service provided.[67]

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,[68] the provider of port service**s** 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 provider of port services shall, ~~in the event of a formal complaint and~~ upon request, make available to the relevant national authority **any relevant** 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 principles used for setting the port charges with regard to the facilities and services to which these port service charges relate.~~

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[67] NL suggests replacing the last sentence by: "Those charges shall at least cover the costs to be recovered, but not be disproportionate to the cost of the service provided."

[68] UK proposes to add: “and at the request of the users”.

Article 14

Port infrastructure charges

1. A port infrastructure charge shall be levied[69] in accordance with national legislation.[70] 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,[71] 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 according to national ports policy and/or the individual port's commercial strategy and investment plan and comply with competition rules[72].

4. Without prejudice to paragraph 3, port infrastructure charges may vary in accordance with the port's economic strategy and commercial practices, related inter alia to certain categories of 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 for such a variation shall be relevant, objective, transparent and non-discriminatory[73].

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69 DE: scrutiny reservation.

70 FI prefers the Commission original proposal. IE, MT and NL want to reinsert "by the managing body". EL and NL propose to delete “in accordance with national legislation”. ES, BE support the current text.

71 UK proposes to add: “and at the request of the users”.

72 IE, NL, MT, and UK ask the addition of a reference to State aid rules. DE suggests the following text: "The structure and the level of port infrastructure charges shall comply with competition rules."

73 *Recital will be added to clarify that the charge may be varied and result in rates being set at zero.*
EL proposes to delete the last sentence.

5. […][74]

6. The managing body of the port or the competent authority shall ensure that port users and the representatives or associations of port users are informed about the ~~amount and~~ structure **and level** of the port infrastructure charges. The managing body of the port or the competent authority shall ensure that users of the port infrastructures are informed of any changes in the ~~amount~~ **structure and level** of the port infrastructure charges ~~or in their structure~~ ~~or criteria used~~ at least three months in advance.

7. The managing body of the port shall, ~~in the event of a formal complaint and~~ upon request, make available to the relevant national authority ~~and to the Commission~~ the information referred to in paragraphs 4 and 6. **Such information shall be also made available to the Commission, [in the event of formal complaint,][75] upon request to the relevant national authority**.

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[74] COM reservation on the deletion of the establishment of common classifications of vessels for the purpose of voluntary environmental charging.

[75] Compliance with Directive 2006/111 to be assessed.

CHAPTER IV – General and final provisions

Article 15

Consultation of port users and other stakeholders

1. The managing body of the port[76] shall[77] regularly[78] consult representatives of port users**,** providers of port services and other relevant stakeholders at least[79] on the following:

(-a) the charging policy[80];

(a) […]

(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;[81]

(c) the efficiency of the administrative procedures in port and where appropriate possible measures to simplify them**,** as well as the proper coordination of port services within the port area;

(ca) environmental issues[82].

2. […]

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76 LT questions the reference to the managing body.
77 DE and LT consider that an obligation to consult is not necessary.
78 DK, MT, EL suggest to delete "regularly".
79 EL proposes "inter alia".
80 For LT this is not a competence of a managing body. NL suggests "port infrastructure and port services charges".
81 For DE, this is not a competence of the managing body.
82 NL, DK, CY, EL suggests adding safety and security. MT proposes the deletion of letter (ca)

Article 16

[…]

1. […]

(a) […]

(b) […]

(c) […]

Article 17

Handling of complaints

1. Member States shall ensure that an effective mechanism is in place to handle complaints arising from the application of this [Regulation] for all the maritime ports covered by this [Regulation] on the territory of each Member State.

2. The handling of complaints shall be carried out in a manner which excludes conflicts of interest and which is functionally independent of any managing body of the port or providers of port services. 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. The handling of complaints shall be impartial and transparent and shall duly respect ~~to~~ the right to freely conduct business.

3. Member States shall ensure that port users and other relevant stakeholders are informed of where and how to lodge a complaint, including, an indication of the authorities responsible for the handling of complaints and relevant national authorities referred to in Articles **12(5),** 13(3) and 14(7**)**. [83]

4. […]

[83] IE, proposes to replace the reference to articles 13(3) and 14(7) with "this Regulation"

5. […]

6. […]

7. […]

8. […]

9. Member States shall inform the Commission about the mechanism for handling of complaints and shall indicate the authorities referred to in paragraph 3 by …[*] at the latest and subsequently any modification thereof. The Commission shall publish and update such information on its website.

Article 18

Cooperation between Member States[84]

1. In order to facilitate a uniform implementation of this [Regulation], Member States shall regularly exchange general information about the activities referred to in Article 17 and the Commission shall[85] participate in and support such cooperation.

2. Member States shall cooperate for the purposes of mutual assistance in the activities referred to in Article 17, including**,** within their respective competences, activities required to handle cross-border complaints.

3. […]

4. […]

5. […]

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[*] OJ: Please insert date: 24 months after the date of entry into force of this Regulation.

[84] BE, DE, FR, LT, MT, PL, SE and UK question the necessity of this Article.

[85] FR proposes "may".

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 any relevant national authority 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[86]

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the provisions of this [Regulation][87] 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 …[*] [88]at the latest and shall notify it without delay of any subsequent amendment affecting them.

Article 21[89]

[…]

1. […]

2. […]

3. […]

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86 EL proposes to delete this Article.

87 DE proposes to add the words "as far as they are not defined in other national law".

* OJ: Please insert date: 24 months after the date of entry into force of this Regulation.

88 LT prefers 48 months.

89 COM reservation on the deletion of delegated and implementing acts.

4. […]

5. […]

Article 22

[…]

1. […]

2. […]

Article 23

Report

No later than …[*], the Commission shall present a report[90] 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 and acts of equivalent effects concluded before ~~…~~[*] **23 May 2013** which are limited in time shall continue to be valid until their expiry.

2. Port service contracts and acts of equivalent effects ~~concluded before …~~[*] which are not limited in time**,** ~~or have similar effects~~ **or those limited in time concluded after 23 May 2013,** shall be aligned to this [Regulation] by 1 July 2025.

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[*] OJ: Please insert date: 72 months after the date of entry into force of this Regulation.

[90] COM considers that two reports could be done, one short-term on the implementation of the Regulation, and one mid-term, on the actual effects.

[*] ~~OJ: Please insert date: date of adoption of this [Regulation].~~

[*] ~~OJ: Please insert date: date of adoption of this [Regulation].~~

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 …[*].

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

Done at Brussels,

| | |
|---|---|
| *For the European Parliament* | *For the Council* |
| *The President* | *The President* |

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[*] OJ: Please insert date: 24 months after the date of entry into force of this [Regulation].