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REPORT

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 1)
No. prev. doc.:	10228/16 TRANS 240 MAR 171 FIN 361 CODEC 882
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 - *Analysis of the final compromise text with a view to agreement*

INTRODUCTION

1. On 23 May 2013, the Commission transmitted the above proposal to the Council and the European Parliament[1].

2. The Commission presented its proposal to the Transport, Telecommunications and Energy Council on 10 June 2013, during the Irish Presidency.

[1] The proposal was accompanied by a communication from the Commission, "Ports: an engine for growth" (doc. 10160/13).

3. The examination by the Shipping Working Party began in October 2013, during the Lithuanian Presidency. The Shipping Working Party made an in-depth analysis of the impact assessment during two meetings. This impact assessment discussion was supported by the indicative checklist developed to examine Commission impact assessments in the Council, in the context of the consideration of Commission proposals and in line with the report on the examination of impact assessments within the Council[2], and constituted one of the three pilot projects conducted by the former Presidency trio on that checklist. All delegations expressed their support for and satisfaction with the opportunity given to make a more profound analysis of the impact assessment. In general, delegations expressed their recognition of the work carried out by the Commission on the very exhaustive impact assessment. However, delegations were critical on several points, notably the policy options chosen/discarded and the methodology used.

4. The work continued during the Hellenic Presidency. The proposal was the subject of a progress report to the Transport Council on 5 June 2014.

5. During the Italian Presidency, a general approach was adopted by the Transport Council on 8 October 2014.

6. The European Parliament voted its amendments at first reading on 8 March 2016. The rapporteur, Knut Fleckenstein, S&D-DE, was given a mandate to negotiate a first reading agreement with the Council.

7. A first trilogue took place on 18 April 2016, followed by trilogues on 24 May and 9 June 2016.

8. The last trilogue took place on 27 June 2016. At that trilogue, an agreement *ad referendum* was reached with the Parliament.

9. The changes compared to the mandate given by the Permanent Representatives Committee on 22 June 2016 are marked in **bold underline**/~~strikethrough~~ in the attached document.

10. The recitals which form part of the agreement at this stage are indicated in footnotes.

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[2] Doc. 8406/13 + COR 1.

11. The Presidency considers that the agreement reached with the European Parliament is balanced and takes into account the concerns raised by Member States throughout the negotiations.

12. The United Kingdom maintains a parliamentary scrutiny reservation on the proposal.

CONCLUSION

13. In light of the above, the Permanent Representatives Committee is asked to examine and approve the text in the annex.

ANNEX

Proposal for a

Regulation of the European Parliament and of the Council establishing a framework for the provision of port services and financial transparency of ports

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[3],

Having regard to the opinion of the Committee of the Regions[4],

Acting in accordance with the ordinary legislative procedure,

Whereas:

[*recitals not included*]

HAVE ADOPTED THIS REGULATION:

[3] OJ C 327, 12.11.2013, p. 111.
[4] OJ C 114, 15.4.2014, p. 57.

CHAPTER I – Subject matter, scope and definitions

Article 1

Subject matter and scope

1.This Regulation establishes:

(a) a framework for the provision 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 port:

(a) bunkering;

(b) cargo handling;

(c) […]

(d) mooring;

(e) passenger services;

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

(g) pilotage; and

(h) towage.

2a. Article 12(2) shall also apply to dredging.

3. This Regulation shall apply to all maritime ports of the trans-European transport network, as listed in Annex II of Regulation (EU) No 1315/2013 of the European Parliament and of the Council[5].[6]

3a. Member States may decide not to apply this Regulation to maritime ports of the comprehensive trans-European transport network located in the outermost regions as referred to in Article 349 TFEU. When Member States decide not to apply this Regulation to such maritime ports, they shall notify that decision to the Commission.

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.

4a. This Regulation is without prejudice to Directive 2014/23/EU of the European Parliament and of the Council[7], Directive 2014/24/EU of the European Parliament and of the Council[8] and Directive 2014/25/EU.

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;

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

6 Agreed recital related to this article: "This Regulation should in no way prejudice the rules in Member States governing the system of property ownership with regard to maritime ports, and should allow for different port structures in Member States."

7 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).

8 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).

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, lashing, unlashing, stowing, transporting and temporary storage of the cargo on the relevant cargo handling terminal and directly related to the transporting of the cargo, but excluding unless the Member State determines otherwise, warehousing, stripping, repackaging or any other value added services related to the handled cargo;

2a. "competent authority" means any public or private body which, on behalf of a local, regional or national level, is entitled to carry out under national law or instruments activities related to the organisation and administration of port activities, in conjunction with or alternatively to the managing body of the port;

3. "dredging" means the removal of sand, sediment or other substances from the bottom of the waterway access to the port, or within the port area that falls into the legal competence of the managing body of 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, whilst not being a port service offered to the user;

4. […]

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, or is empowered by such law or instruments, to carry out, at a local level, the administration and management of the port infrastructure and one or more of the following tasks in the port concerned: the coordination of port traffic, the management of port traffic, the coordination of the activities of the operators present in the port concerned, and/or the control of the activities of the operators present in the port concerned;

6. "mooring" means the berthing and un-berthing services, including shifting along the quayside, required for **the safe operation of** a waterborne vessel ~~operated~~ in the port or in the waterway access to the port;

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 waterway access to the port or safe navigation within the port;

9. "port infrastructure charge" means a charge levied for the direct or indirect benefit of the managing body of the port, or the competent authority, for the use of infrastructure, facilities and services, including the waterways giving access to those ports, as well as access to the processing of passengers and cargo, but excluding land lease rates and charges having equivalent effect;[9]

10. "collection of ship-generated waste and cargo residues" 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[10];

11. "port service charge" means a charge 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 or act of equivalent effect between a provider of port services and a managing body of the port, or a competent authority, having as its subject-matter the provision of one or more port services as defined in Article 1(2), without prejudice to the form of designating providers of port services;

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9 Agreed recital related to this definition: "This Regulation should not limit the managing body of the port, or the competent authority, in setting up its charging system, as long as port infrastructure charges paid by the operators of waterborne vessels or cargo owners are transparent**, in particular easily identifiable**, non-discriminatory ~~and easily identifiable~~ and contribute to the maintenance and development of infrastructure and service facilities and the provision of services that are needed to perform or facilitate transport operations within the port area and on the waterways giving access to those ports that fall within the legal competence of the managing body of the port."

10 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 infrastructure 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, crew and other persons 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, if such waterway falls into the legal competence of the managing body of the port.

CHAPTER II – Provision of port services

Article 3

Organisation of port services[11]

1. […]

1a. Access to the market for the provision of port services in maritime ports may, in accordance with this Regulation, be subject to:

(a) minimum requirements for the provision of port services;

(b) limitations of the number of providers;

(c) public service obligations;

(d) restrictions related to internal operators.

1b. ~~Without prejudice to Union law,~~ Member States may decide in national law not to ~~apply~~ **impose** any **of the** ~~limitations~~ **conditions referred to in paragraph 1a** to one or more categories of port services.

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

[11] Agreed recital related to this article: "In line with the general principles set out in the Treaties, providers of port services should be free to provide their services in maritime ports covered by this Regulation. However, it should be possible to subject that freedom to certain conditions."

Article 4

Minimum requirements for the provision of port services

1. The managing body of the port, or the competent authority, may require providers of port services, including subcontractors, to comply with minimum requirements to perform the corresponding port service.

2. The minimum requirements provided for in paragraph 1 may only relate to:

(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 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 required level;

(ba) the availability of the port service to all users, at all berths and without interruptions day and night, throughout the year;

(c) the compliance with requirements on the maritime safety or the safety and security of the port or access to it, its installations, equipment, workers and other persons;

(d) the compliance with local, national, Union and international environmental requirements;

(da) the 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 of seafarers and applicable rules on labour inspections;[12]

[12] Agreed recital related to this provision: "**Member States should be able to require compliance with obligations in the field of social and labour law for the operation of port services in the port concerned.**"

(db) the good repute of the port service provider, as determined in accordance with any applicable national law on good repute, taking into consideration any compelling grounds to doubt the reliability of the provider of port services;[13]

(dc) the availability of the port service to all users;

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

2a. Without prejudice to paragraph 3, where a Member State deems it necessary to impose a flag requirement in order to ensure full compliance with the provisions of paragraph 2(da) for waterborne vessels predominantly used for towage or mooring operations in ports located on its territory, it shall inform the Commission of its decision prior to the publication of the contract notice or, in the absence of a contract notice, prior to imposing a flag requirement.[14]

3. The minimum requirements shall:[15]

(a) be transparent, objective, non-discriminatory, proportionate, and relevant to the category and nature of the port service concerned;

(b) be complied with until the right to provide a port service expires.

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[13] Agreed recital related to this provision: "In deciding whether a port service provider satisfies the requirements of good repute, the competent authority, or the managing body of the port, should consider whether there are any compelling grounds to doubt the reliability of the provider of port services, such as convictions or penalties for serious criminal offences, or serious infringements of applicable Union and national law."

[14] Agreed recital related to this provision: "**Member States should inform the Commission prior to any decision to impose a flag requirement for vessels predominantly used for towage and mooring operations. Such a decision should be non-discriminatory, based on transparent and objective grounds and should not introduce disproportionate market barriers.**"

[15] Agreed recital related to this provision: "The minimum requirements should contribute to a high quality of port services and not introduce market barriers, in line with the general objectives of this Regulation."

4. Where the minimum requirements include specific knowledge of local conditions, the managing body of the port, or the competent authority, shall ensure that adequate access to information exists, under transparent and non-discriminatory conditions.

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 …* or, in the case of 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.

5a. The application of this Article is without prejudice to the provisions of Article 8.

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 four months, from receiving a request for the granting of such a right and the necessary documents.

2a. Any refusal, by the managing body of the port, or the competent authority, shall be duly justified on the basis of the minimum requirements set out in Article 4(2).

3. Any limitation or termination, by the managing body of the port, or the competent authority, of the right to provide a port service shall be duly justified and in accordance with paragraph 1.

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

Article 6

Limitations of the number of providers of port services[16]

1. 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:

(a) the scarcity or reserved use of land or waterside space provided 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;

(b) the absence of limitation obstructs the performance of public service obligations as provided for in Article 8, including when such absence leads to excessively high costs related to the performance of such obligations for the managing body of the port, the competent authority, or the port users;

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

(bc) the characteristics of the port **infrastructure or the nature of the port** traffic do not ~~enable~~ **permit operations of** multiple providers of port services **in the port** ~~to operate in economically satisfactory conditions~~;[17]

(bd) where it has been established pursuant to Article 35 of Directive 2014/25/EU that a port sector or sub-sector, together with its port services, within a Member State carries out an activity directly exposed to competition in accordance with Article 34 of that Directive. In such case, paragraphs 2 and 3 of this Article shall not apply.

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.

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[16] Agreed recital linked to this article: "This Regulation should be without prejudice to the right of Member States to impose public service obligations related to port services."

[17] Agreed recital linked to this provision: "Any limitation to the number of providers of port services should be justified by clear and objective reasons and not introduce disproportionate market barriers."

3. The managing body of the port or the competent authority shall publish the adopted decision.

3a. Any limitation in the number of providers of a port service shall follow a selection procedure that is open to all interested parties, non-discriminatory and transparent. The managing body of the port, or the competent authority, shall publish information on the port service to be provided and the selection procedure and shall ensure that all essential information that is necessary for the preparation of their applications is effectively accessible to all interested parties. The submission deadline shall be long enough to allow interested parties to make a meaningful assessment and prepare their application, under normal circumstances the minimum limit shall be 30 days.[18] [19]

3b. Paragraph 3a shall not apply in the cases referred to in paragraphs 1(bd) and 4a of this Article and in Article 9.

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 conflicts of interest. In the absence of such measures, the number of providers shall not be less than two, unless any of the reasons listed in paragraph 1 justifies a limitation to a single provider.

4a. Member States may decide that their ports of the comprehensive network which do not meet the criteria in point (b) of Article 20(2) of Regulation (EU) No 1315/2013 may limit the number of service providers for a given port service. They shall inform the Commission thereof.

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18 Agreed recital linked to this paragraph (selection procedure): "The managing body of the port, or the competent authority, should publish its intention to conduct a selection procedure for the provision of a port service, including on the internet and, where appropriate, in the Official Journal of the European Union, containing information on the selection procedure, the deadline for the submission of tenders, the relevant award criteria and information on how the relevant documents necessary to prepare an application can be accessed."

19 Agreed recital linked to this paragraph (substantial modification of a contract): "In order to ensure transparency and equal treatment, amendments to the provisions of a contract during its term should be considered to constitute a new award of a contract when they render the contract materially different in character from the original contract and, therefore, such as to demonstrate the intention of the parties to renegotiate the essential terms of that contract."

Article 7

[…]

1. […]

2. […]

3. […]

4. […]

5. […]

6. […]

7. […]

Article 8

Public service obligations

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

(a) the availability of the port service to all port users, at all berths, without interruption, day and night, throughout the year;

(b) the availability of the service to all users on equal terms;

(c) the affordability of the service for certain categories of users;

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

(cb) the provision of adequate transport services to the public and territorial cohesion.

2. The obligations referred to in paragraph 1 shall be clearly defined, transparent, non-discriminatory, verifiable and shall guarantee equality of access to all providers of port services established in the Union.

3. […]

4. […]

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.

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 managing body of the port, or 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 two years. During that time period, the managing body of the port, or the competent authority, shall either launch a new procedure to select a provider of port services or shall apply Article 9. Collective industrial action taking place in accordance with national law shall not be considered a disruption of port services for which an emergency measure may be taken.

Article 9

Internal operator

1. Without prejudice to Article 6(4), the managing body of the port, or the competent authority may decide to provide a port service itself, or through a legally distinct entity over which it exercises a control similar to that exercised over its own departments, provided that Article 4 applies equally to all operators providing the service concerned. In such cases, the port service provider shall be considered as an internal operator for the purpose 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 legal entity concerned.

3. In the cases provided for in Article 6(1), with the exception of point (bd), 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. […]

5. […]

Article 10

Safeguarding of employees' rights[20]

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 applicable collective agreements between social partners, 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.

[20] Agreed redrafted version of recital 19: "Member States should retain the power to ensure an adequate level of social protection for the staff of undertakings providing port services. This Regulation should not affect the application of the social and labour rules of the Member States. It is appropriate to clarify that in cases where Directive 2001/23/EC does not apply, where the conclusion of a port service contract entails a change of port service provider, the managing body of the port, or the competent authority, should nevertheless be able to require that the rights and obligations of the outgoing provider of port services arising from a contract of employment, or from an employment relationship, existing on the date of that change are transferred to the newly appointed port service provider.

2a. In the case of a change of provider of port services that is due to the award of a concession or public contract, the managing body of the port, or the competent authority, may require that the rights and obligations of the outgoing provider of port services arising from a contract of employment**,** or from an employment relationship as defined in national law, and existing on the date of that change, are transferred to the newly appointed provider of port services. In such case, the staff previously taken on by the outgoing provider of port services shall be granted the same rights as those to which they would have been entitled if there had been a transfer of undertaking within the meaning of Directive 2001/23/EC.

3. When, in the context of the provision of port services covered by this Regulation, a transfer of staff occurs, 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.[21]

[21] Agreed recital linked to this paragraph: "Whenever measures provided for in this Regulation entail the processing of personal data, such processing should be carried out in accordance with Union law on the protection of personal data, in particular Regulation (EU) No 2016/679 of the European Parliament and of the Council."

Article 11

Exemptions

1. This Chapter and the transitional provisions of Article 24 shall not apply to cargo handling**,** ~~and~~ passenger services **and pilotage**.*

~~Article 11a~~

~~National derogations~~

2. Member States may decide ~~not~~ to apply this Chapter and the transitional provisions of Article 24 to pilotage. Member States shall inform the Commission thereof.

* It was agreed to add a recital along the following lines: "According to Resolution A.960 of the International Maritime Organization (IMO), each pilotage area needs highly specialised experience and local knowledge on the part of the pilot. Moreover, pilotage is generally mandatory and often organised or provided by the Member States themselves. Furthermore, Directive 2009/16/EC on port State control entrusts a role to pilots in reporting to competent authorities apparent anomalies which may prejudice the safe navigation of the waterborne vessel, or which may pose a threat or harm the marine environment. In addition, where safety conditions allow it, all Member States should encourage the use of Pilot Exemption certificates, or equivalent mechanisms, in order to improve efficiency in ports, in particular to stimulate short sea shipping. Member States should remain free to decide whether or not to apply Chapter II to pilotage in order to avoid potential conflicts of interest between public interest functions and commercial considerations. In order to ensure the distribution of relevant information, the Commission should be informed accordingly."

CHAPTER III – Financial transparency and autonomy

Article 12

Transparency of financial relations

1. The financial relations between public authorities and a managing body of a port, or other entity that provides port services on its behalf, in receipt of public funds shall be reflected in a transparent way in the accounting system 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 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 of that publicly funded port service or dredging, 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 or any other form of public financial support.

4. The managing body of the port, or other entity that provides port services on its behalf, 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, or other entity that provides port services on its behalf, shall, in the event of a formal complaint and upon request, make available to the relevant authority in the Member State concerned 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. Such information shall be made available to the Commission by the relevant authority upon request. The information shall be transmitted within three months from the date of the request.

6. The managing body of the port, or other entity that provides port services on its behalf, 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.

7a. Member States may decide that paragraph 2 shall not apply to their ports of the comprehensive network which do not meet the criteria in point (b) of Article 20(2) of Regulation (EU) No 1315/2013 in case of disproportionate administrative burdens, provided that any public funds received, and their use for providing port services, remain fully transparent in the accounting system. In such case, the Member States shall inform the Commission thereof in advance.

Article 13

Port service charges

1. The charges for the services provided by an internal operator under a public service obligation, the charges for pilotage services that are not exposed to effective competition and the charges levied by providers of port services, referred to in point (b) of Article 6(1), shall be set in a transparent, objective, and non-discriminatory way and shall be proportionate to the cost 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 services 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 authority in the Member State concerned 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.

Article 14

Port infrastructure charges

1. Member States shall ensure that a port infrastructure charge is levied. 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 determined according to the individual port's commercial strategy and investment plan**s and shall comply with competition rules.**~~, as well as,~~ **W**here relevant, **such charges shall also respect the general requirements set within the framework of** the general ~~national~~ ports policy ~~framework and legislation,~~ **of the Member State concerned** ~~and comply with competition rules~~.

4. Without prejudice to paragraph 3, port infrastructure charges may vary in accordance with the port's economic strategy and the port's spatial planning policy, 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 transparent, objective and non-discriminatory and shall be consistent with competition law, including rules on State aid. Port infrastructure charges may take into account external costs and may vary in accordance with commercial practices.

5. […]

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 nature and level of the port infrastructure charges. The managing body of the port, or the competent authority, shall ensure that users of the port infrastructure are informed of any changes in the nature and level of the port infrastructure charges at least two months in advance. The managing body of the port, or the competent authority, shall not be required to disclose differentiations in the charges that are the result of individual negotiations.

7. The managing body of the port shall, in the event of a formal complaint and upon request, make available to the relevant authority in the Member State concerned the information referred to in paragraphs 4 and 6 and any relevant information on the elements serving as a basis to determine the structure and the level of the port infrastructure charges. Such information shall be made available to the Commission by the national authority upon request.

CHAPTER IV – General and final provisions

~~Article 10a~~ **Article 14a**[*]

Training of staff

Providers of port services shall ensure that employees receive the necessary training to acquire the knowledge which is essential for their work, with specific attention for health and safety aspects**, and that training requirements are regularly updated to meet the challenges of technological innovation**.[22] [23] [24]

[*] *Moved here from Chapter II.*

[22] Agreed recital linked to this Article: "In a complex and competitive sector such as port services, initial and periodic training of staff is essential to ensure the quality of services and to protect the health and safety of port workers. Member States should ensure that providers of port services provide adequate training to their employees."

[23] Agreed recital: "The EU Sectoral Social Dialogue Committee for Ports provides the social partners with a framework to develop a joint approach towards social challenges related to port labour relations, including working conditions, health and safety questions, training requirements~~,~~ **and** professional qualifications**, in particular in the light of market-based and technological developments,** and enhancing the attractiveness of the sector to young workers and female workers**, considering the importance of safeguarding the competitiveness of European maritime ports and promoting good working conditions**. In full respect of the autonomy of the social partners, the EU Sectoral Social Dialogue for Ports is invited to develop guidelines on the development of training requirements to prevent accidents in the workplace and to ensure the highest level of health and safety for port workers, taking into account technological progress and advances in transport logistics. **Social partners should also explore different models for the organisation of maritime port labour that secure quality jobs and safe working conditions and that address fluctuations in the demand for port work.** It is important that the Commission support and facilitate the work of the EU Sectoral Social Dialogue Committee for Ports."

[24] Agreed recital: "In full respect of the autonomy of the social partners, the EU Sectoral Social Dialogue for Ports is invited to gather evidence and report on trends in the demand for port work and flexibility required by port operations, taking account of evolving fleet sizes, technical progress and the impact of automation, and on any evidence of impact upon the terms and conditions of employment generally."

Article 15

Consultation of port users and other stakeholders

1. […]

1a. The managing body of the port shall, in accordance with any applicable national law, consult port users on its charging policy, including in cases covered by Article 9. Such consultation shall include substantial changes to the port infrastructure charges and port service charges in case of internal operators providing port services under public service obligations.

2. The managing body of the port shall, in accordance with any applicable national law, consult port users and other relevant stakeholders on essential matters within its competence regarding:

(a) the coordination of port services within the port area;

(b) measures to improve connections within the hinterland, including measures to develop and improve the efficiency of rail and inland waterways transport;

(c) the efficiency of administrative procedures in the port and measures to simplify them;

(d) environmental matters;

(e) spatial planning; and

(f) measures to ensure safety in the port area, including, where appropriate, health and safety of port workers.

2a. The providers of port services shall make available to port users adequate information about the nature and level of the port service charges.

2b. The managing body of the port and providers of port services shall respect the confidentiality of commercially sensitive information when carrying out their obligations under this Article.

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 the right to freely conduct business.

3. Complaints shall be filed in the Member State of the port where the dispute is presumed to have its origin. 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.

4. The authorities responsible for handling complaints shall, where appropriate, cooperate for the purposes of mutual assistance in disputes involving parties established in different Member States.

5. The authorities responsible for the handling of complaints shall, in accordance with national law, have the power to require managing bodies of the ports, providers of port services and port users to provide information relevant to a complaint.

6. […]

7. […]

8. The authorities responsible for the handling of complaints shall in accordance with national law have the power to take decisions that have binding effect, subject to judicial review, where applicable.

9. Member States shall inform the Commission about the mechanism for the 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.

9a. Member States shall, where appropriate, exchange general information about the application of this Article. The Commission shall support such cooperation.

Article 18

[…]

1. […]

2. […]

3. […]

4. […]

5. […]

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

Article 18a

Relevant authorities

Member States shall ensure that port users and other relevant stakeholders are informed of the relevant authorities referred to in Articles 12(5), 13(3) and 14(7). Member States shall also inform the Commission of these authorities by …* at the latest and subsequently any modification thereof. The Commission shall publish and regularly update such information on its website.

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 managing body of the port, the competent authority, or any other relevant national authority. Appeal bodies shall be independent of the parties involved and 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 **…*** at the latest and shall notify it without delay of any subsequent amendment affecting them.

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

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

Article 21

[…]

1. […]

2. […]

3. […]

4. […]

5. […]

Article 22

[…]

1. […]

2. […]

Article 23

Report

No later than …*, the Commission shall present a report to the European Parliament and the Council on the functioning and effect of this Regulation.

The report shall take into account any progress made in the framework of the EU-level Sectoral Social Dialogue Committee for Ports.

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

Article 24

Transitional measures

1. This Regulation shall not apply to port service contracts concluded before …[*] and which are limited in time.

2. Port service contracts concluded before …[*] which are not limited in time**,** or have similar effects**,** shall be aligned to this Regulation by 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 …[*].

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

Done at Strasbourg,

For the European Parliament	*For the Council*
The President	The President
[…]	[…]

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