



Brussels, 2 October 2014
(OR. en)

13764/14

**Interinstitutional File:
2013/0157 (COD)**

**TRANS 456
MAR 152
FIN 695
CODEC 1925**

REPORT

From:	General Secretariat of the Council
To:	Council
No. prev. doc.:	13555/14 TRANS 444 MAR 149 FIN 677 CODEC 1872
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 (First reading) - General approach

I. INTRODUCTION

The Commission proposal

1. On 23 May 2013, the Commission transmitted the above proposal to the Council and the European Parliament¹.
2. The general objectives of the proposal are to contribute to fairer conditions of competition and reduce legal uncertainties in view of encouraging efficient port services and investments.

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

3. The proposed Regulation seeks to establish (a) a clear framework for access to the market of port services; and (b) common rules on the financial transparency and charges to be applied by managing bodies of ports or providers of port services.
4. The Regulation would apply to the provision of specific categories of port services and to all maritime ports listed in the Regulation on the trans-European Transport Network Guidelines ("the TEN-T Regulation")².
5. The Commission proposal addresses the following issues:
 - Market access facilitation to port services in a fair, reasonable and non-discriminatory way. The principle of freedom to provide services would be applicable to port services under conditions which allow Member States and managing bodies of ports to impose minimum requirements for the provision of port services and limitations of the number of providers of port services if necessary.
 - Financial transparency in the use of public funds and the application of transparency rules to port service charges and port infrastructure charges. Where a managing body of a port benefits from public funds, there would be a transparent accounting in order to keep information, showing the effective and appropriate use of those funds, at the disposal of the national competent authorities and the Commission. Where port service providers have not been subject to an open public tendering procedure or are internal operators, the charges for the service should be transparent, non-discriminatory and set according to normal market conditions.

² 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).

- General provisions: A port users advisory committee would be set up in every port and consulted regularly on the structure and level of charges. The proposal also contains rules on consultation of stakeholders by the managing body of the port on broader strategic issues such as the connection with the hinterland. Finally, each Member State would have to ensure that an independent supervisory body monitors and supervises the application of the Regulation and cooperation mechanisms between the different national independent supervisory bodies would also be established.

II. WORK IN THE COUNCIL

6. The Commission presented its proposal to the Transport, Telecommunications and Energy (TTE) Council on 10 June 2013.
7. 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 Council³, 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.

³ Doc. 8406/13 + COR 1.

8. The work continued during the Hellenic Presidency. The proposal was the subject of a progress report to the Transport Council on 5 June 2014.
9. During the Italian Presidency, the work has continued in the Shipping Working Party with the objective of reaching a general approach at the Transport Council on 8 October 2014.
10. On 1 October, the Permanent Representatives Committee examined the outstanding issues and managed to solve some of them. The Committee also agreed on some modifications to the text, which are reflected in the annex to this report (deleted text is in ~~striketrough~~, new text is in **bold**). However, some issues remain outstanding and are described below.
11. It should be noted that the Council preparatory bodies have not yet examined the recitals.

III. WORK IN THE EUROPEAN PARLIAMENT, OTHER UNION BODIES AND NATIONAL PARLIAMENTS

12. The committee responsible of the European Parliament, the Committee on Transport and Tourism (TRAN), appointed Mr Knut Fleckenstein (S&D-Germany) as rapporteur for the proposal. The rapporteur submitted his draft report on 11 November 2013. However, due to lack of time and to the fact that several key questions remained open, TRAN decided not to vote on the report before the elections to the European Parliament. On its part, the Committee on Employment and Social Affairs (EMPL) voted its opinion on the proposal on 9 January 2014 (rapporteur: Philippe De Backer, ALDE-Belgium).

13. The European Economic and Social Committee adopted an opinion on 11 July 2013⁴. The Committee of the Regions adopted an opinion on 28 November 2013⁵.
14. Seven national parliaments (Belgium, Spain, France, Latvia, Malta, Poland and Sweden) have submitted a reasoned opinion on the application of the principles of subsidiarity and proportionality with regard to the proposal.

IV. OUTSTANDING ISSUES

15. As an introductory remark, the Presidency would like to stress that many difficult issues have been solved during the intense negotiations in July and September, thanks to the flexibility shown by delegations and the Commission. The Commission proposal has been modified and rendered more flexible in order to address the concerns expressed by delegations, inter alia with regard to the perceived disproportionate administrative burdens for small ports and the need to take into account the diversity of the port sector in Europe and the particular circumstances in the Member States. As an example, as far as administrative burdens are concerned, the detailed provisions on consultation and the designation of an independent supervisory body have been simplified or deleted. As for the scope of application, the Member States are for example given the possibility to exclude comprehensive TEN-T ports located in the outermost regions. The provisions empowering the Commission to adopt delegated and implementing acts have been removed. The transitional provisions have been adapted so as not to interfere with contracts and acts of equivalent effect concluded before the date of adoption of the Regulation, which was a major concern for several delegations.

⁴ OJ C 327, 12.11.2013, p. 111.

⁵ OJ C 114, 15.4.2014, p. 57.

16. However, the Presidency considers that the essential elements of the Commission proposal have been kept. It is suggested to keep the legal form proposed by the Commission (a regulation). None of the port services initially covered by the proposal would be completely excluded from the scope of application. In particular, the rules on financial transparency would remain applicable, at least to some extent, to all services. With this in mind, the Presidency believes the text to be balanced and ripe for agreement. Having said that, a number of delegations and the Commission have expressed concerns about what they consider as a "watering down" of the Commission proposal and would have preferred a more ambitious approach.

The legal form

17. The legal form of the legislative act has been a contentious issue from the beginning. The Commission proposed a regulation in order to ensure a uniform application and a level playing-field throughout the Union. In the Commission's view, this would also mean less administrative burdens for the Member States, who would not have to transpose the provisions. Several delegations agreed with this approach. Others, however, expressed the view that a directive or even a non-binding act would be less intrusive and leave more room for flexibility. Most delegations were able to accept a regulation in a spirit of compromise. However, Lithuania has consistently upheld that a non-binding act (such as guidelines) would be preferable.

Scope of application

(a) Cargo handling and passenger services – Article 11

18. According to the initial Commission proposal, cargo handling and passenger services are excluded from the scope of Chapter II (market access rules). The Presidency proposes no changes to the Commission proposal in this respect.

19. Spain has a strong reservation on the fact that those port services, the most economically important, are excluded from the market access rules, thus limiting the added value of the proposed Regulation.
20. The Presidency is proposing some clarifications to recital 20 in order to make it clear that Member States remain free to decide on market access rules for cargo handling and passenger services, as long as they respect the general principles set out in the case-law of the Court of Justice of the European Union.

(b) Pilotage – Article 11a

21. The inclusion of pilotage in the proposal has been the subject of intense discussions and several options have been put on the table. The Presidency suggests to adopt the option that received the broadest support in the Council preparatory bodies, namely to keep pilotage in the scope of the Regulation (see point (g) of Article 1(2)), but to introduce a new Article 11a (national derogations), making it possible for Member State to decide not to apply Chapter II (market access rules) to pilotage. Other provisions of the Regulation, most importantly the provisions on financial transparency and autonomy in Chapter III, would apply to pilotage.
22. A number of delegations have reserved their positions on the above compromise proposal. Spain and Finland consider that pilotage should be fully included in the scope and that national derogations should not be allowed. The Commission is of the same view and notes in this context that the possibility for derogations are neither in the interest of the port sector (including port users) nor of the pilots themselves. Lithuania, on the other hand, requests the complete exclusion of pilotage from the scope of the Regulation.

23. The Commission has made three requests with regard to the compromise on pilotage. First of all, it considers that Article 11a should be modified so as to include an obligation for Member States to inform the Commission. According to the Commission, this is fully consistent with other provisions of the Regulation containing possibilities for Member States to derogate from or, if they so wish, extend the application of the Regulation (see Article 1(3a), Article 1(4) and Article 6(4a)). The Commission underlines that it would be very difficult for the Commission to carry out its task to supervise the correct application of the Regulation if it were not informed of Member States' intention to apply or not the Regulation to pilotage. Secondly, Article 11a should be modified so as to include an obligation for Member States to make the reasons for a national derogation public. It is important, according to the Commission, for concerned parties (e.g. potential providers of pilotage services) throughout the Union to be made aware of the rules that apply in Member States, inter alia to avoid unnecessary complaints. Denmark fully supports these two Commission requests. On the contrary, Belgium and France are against both Commission requests because they believe it would upset the delicate balance of the compromise before Council, while Germany considers that it would create administrative burdens. Thirdly, the Commission requests a modification to Article 13(1) (port service charges), replacing the words "including as regards pilotage" by "and in the cases of Article 11a". The Commission considers this change important to make sure that the rules on port service charges apply to pilotage when pilotage is exempted from market access rules (and therefore from any form of market pressure). This last request by the Commission is supported by Belgium, Denmark, Finland, Ireland, the Netherlands and Portugal.

(c) Dredging – Article 1(1a) and Article 12(2)

24. As is the case for pilotage, dredging has been – and remains – a controversial issue. A broad majority of delegations was in favour of its complete exclusion from the scope, arguing that dredging is not a port service provided to the specific port users, but of general interest to the ports. However, as the discussions have evolved, most delegations have been able to accept a limited application of the Regulation to dredging. The Presidency compromise contains the following elements:

- dredging would be deleted from the list of port services in Article 1(1);
- for reasons of legal clarity it would, however, be included in a new paragraph 1a in Article 1, stating that Article 12(2) applies to dredging;
- the definition of dredging in point 3 of Article 2 would be amended so as to limit it to the port area which falls into the legal competence of the managing body of the port;
- the rules on financial transparency would apply when a managing body of a port in receipt of public funds provides dredging, within the port area which falls into its legal competence, itself (or other entity provides dredging on behalf of the managing body of a port) (Article 12(2)); in such case, the managing body of the port should keep the accounts of that publicly funded dredging activity separate from other activities.

25. Most delegations have stated that they could accept this compromise. Estonia, Spain, Finland, the Netherlands and the Commission could accept the general lines of the compromise in a spirit of flexibility, but consider that dredging should be added also in Article 12(1), which contains the general rule that financial relations between public authorities and the managing body of a port in receipt of public funds shall be reflected in a transparent way in the accounting system. Lithuania still has a strong preference for excluding dredging altogether from the scope of the Regulation.

(d) Exemption from the rules on financial transparency for certain ports – proposed new paragraph 7a in Article 12

26. The Commission's initial proposal covers all maritime ports of the trans-European transport network (TEN-T) (Article 1(3)). One of the arguments put forward by the Commission is that all those ports play a role in the internal market and the territorial cohesion of the Union since they were listed in the TEN-T Regulation. Moreover, these ports may compete between each other, even ports of smaller size. Therefore, the same rules of financial transparency should apply. Lastly, these ports are eligible for Union funding through the Connecting Europe Facility (CEF) and rules on financial transparency are, consequently, particularly important.
27. However, some delegations requested that the scope of application be limited to the core ports of the trans-European transport network, arguing that many of the provisions would lead to disproportionate administrative burdens for smaller ports.
28. The Presidency – taking into account the diverging views on this matter – has suggested a middle way. First of all, as already indicated in the introductory remarks above, the Presidency has tried to reduce the administrative burdens by rendering the Regulation more flexible, for instance by adding a possibility for ports to limit the number of operators when the characteristics of the traffic do not enable multiple operators (point (bc) of Article 6(1)), and by allowing small ports to derogate from Articles 6 and 7 which define the procedure to follow when limiting and selecting the providers of port services (Article 6(4a)). Furthermore, Member States have been given the option to exclude all comprehensive ports located in the outermost regions (Article 1(3a)).

29. France, supported by Greece, Croatia and the United Kingdom, has proposed a new paragraph 7a in Article 12 stating that "Member States may decide that paragraph 2 [*of Article 12, which makes reference to the obligation for ports in receipt of public funding to keep separate accounts*] shall not apply to their ports of the comprehensive network which do not meet the criteria in point (b) of Article 20(2)⁶ of Regulation (EU) No 1315/2013 [*i.e. the TEN-T Regulation*] in case of disproportionate administrative burdens. In such case, the Member States shall inform the Commission thereof." Germany agrees with the principle, but would favour a different approach.
30. Denmark, Estonia, Spain, Finland, the Netherlands, Portugal, and Sweden strongly oppose this proposal. They argue that all comprehensive TEN-T ports should be treated equally and that financial transparency should be applicable to all, in particular to ports which are eligible for EU funding. Furthermore, they consider that the proposal is vague, because it does not specify what "disproportionate administrative burdens" mean and who decides if they are at hand. Finally, the reference to statistics ("latest available three-year average") leads to uncertainty as to which ports are covered at which time. It should be noted that the Commission proposal covers 329 maritime ports; according to the Commission almost a third of those ports could potentially be excluded from (a part) of the rules on financial transparency if this proposal were accepted.
31. Finland and Portugal have indicated that their acceptance of Article 6(4a), which contains the same reference to point (b) of Article 20 of the TEN-T Regulation, is conditional upon not introducing the proposed new paragraph 7a.

⁶ The provision reads: "2. Maritime ports shall be entry and exit points for the land infrastructure of the comprehensive network. They shall meet at least one of the following criteria: [...] (b) the total annual cargo volume – either for bulk or for non-bulk cargo handling – exceeds 0,1 % of the corresponding total annual cargo volume handled in all maritime ports of the Union. The reference amount for this total volume is the latest available three-year average, based on the statistics published by Eurostat;".

32. The Presidency has taken note of the diverging views of the Member States, but is not proposing any modifications to Article 12.

Other outstanding issues

33. The Presidency has introduced, in Article 6(1)(bd) a possibility for the managing body of the port or the competent authority to limit the number of providers of port services for a given port service where it has been established, pursuant to the Directive on procurement by entities operating in the water, energy, transport and postal services sectors, that a port sector or sub-sector, together with its port services, within a Member State carries out an activity directly exposed to competition. This issue is of particular importance to the United Kingdom who has asked for provisions taking into account the particular situation of its ports. The Commission has a reservation on this provision and suggests to reformulate to "port service sector" in order to ensure legal certainty.
34. With regard to port infrastructure charges (Article 14), Greece suggests deleting the penultimate sentence of paragraph 4, which specifies that the criteria for variation of such charges shall be relevant, transparent, objective and non-discriminatory. According to Greece, the criteria in question are vague and introduce legal uncertainty.
35. Linked to infrastructure charges is the proposed new recital in footnote 38 concerning common classification criteria for vessels for the purpose of voluntary environmental charging. Greece maintains a reservation on the recital. The Presidency would like to remind delegations that the recital is the result of a compromise following the deletion of Article 14(5), according to which the Commission would have been empowered to adopt delegated acts, inter alia on the subject referred to in the recital.

Other reservations

36. Austria maintains a general scrutiny reservation on the proposal.
37. Malta and the United Kingdom maintain parliamentary scrutiny reservations on the text.
38. Furthermore, the Commission has a general reservation pending the first reading vote in the European Parliament.

V. CONCLUSION

39. The Council is invited to examine the text, as set out in the Annex to this report, solve the outstanding issues and adopt the general approach at its meeting on 8 October 2014.
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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 Committee⁷,

Having regard to the opinion of the Committee of the Regions⁸,

Acting in accordance with the ordinary legislative procedure,

⁷ OJ C 327, 12.11.2003, p. 111.

⁸ 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 growth⁹, 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.

⁹ 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 Council¹⁰, 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.

¹⁰ 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 interest¹¹, Commission Regulation (EU) No 360/2012¹² and the European Union framework for State aid in the form of public service compensation¹³.
- (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.

¹¹ OJ L 7, 11.1.2012, p. 3.

¹² 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).

¹³ 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/EC¹⁴.
- (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. 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. ~~Consequently, Chapter II of this Regulation should not apply to the provision of cargo-handling and passenger services, but~~ **Therefore**, Member States should remain free to decide to apply ~~nevertheless~~ the rules of ~~this~~ **Chapter II** to these two services **or to keep their existing national legislation on market access with regard to cargo handling and passenger services while respecting the main principles in the case-law of the Court of Justice of the European Union.** ~~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/EC¹⁵ without prejudice to its scope.

¹⁴ 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).

¹⁵ 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 Council¹⁶.
- (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;

HAVE ADOPTED THIS REGULATION:

¹⁶ 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).

CHAPTER I – Subject matter, scope and definitions

Article 1

Subject matter and scope

1. This Regulation¹⁷ establishes:
 - (a) a framework for market access to 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.

¹⁷ LT prefers a non-binding act.

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 Council¹⁸.
- 3a. Member States may decide not to apply this Regulation to maritime ports of the comprehensive 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 their 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.

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;

¹⁸ 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).

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 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;
- 2a. "competent authority" means any public or private body which, on behalf of a regional or national level, is entitled to carry out under national law or instruments activities related to the organisation and supervision 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 within the port area which 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;
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 infrastructures, port traffic, the coordination and, where appropriate, the control of the activities of the operators present in the port concerned;

6. "mooring" means the berthing and un-berthing services required for a waterborne vessel 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 facilities and services, including the waterways giving access to those ports, as well as for access to the processing of passengers and cargo, but excluding land lease rates and charges having equivalent effect;
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 Council¹⁹;
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 contract or any other 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 port service providers;

¹⁹ 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, if such waterway falls into the legal competence of the managing body of the port.

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

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. Without prejudice to any general requirements which apply to all bona fide service providers established in the Union, the minimum requirements provided for in paragraph 1 may only 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 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;
 - (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;
 - (dc) the availability of the service without interruption during the day, the night, the week and the year;
3. The minimum requirements shall:
- (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; and
 - (c) not be used to introduce market barriers.

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 ...^{*} 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.

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.
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. Any termination 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 services²⁰

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 services for a given port service for one or several 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 the public service obligations as provided for in Article 8;
 - (ba) the absence of limitation leads to a financial compensation for the public service obligations which is excessively high²¹ for the managing body of the port or the competent authority, or for 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 traffic do not enable multiple providers of port services to operate in economically satisfactory conditions in the port;

²⁰ The following recital will be added: "The possibility left to impose minimum requirements and limit the number of providers of port services should not prevent Member States from ensuring an unrestricted freedom to provide services in their ports."

²¹ The following recital, explaining the concept of "excessively high" financial compensation, will be added: "A limitation of the number of port service providers should be allowed when the financial compensation for the public service obligation leads to a clear disadvantage to the competitiveness of the port due to the imposition of disproportionate port charges necessary to cover the financial compensation."

(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.²²

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.
 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.²³
- 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. In such case, paragraphs 1a to 7 of Article 7 of this Regulation shall not apply and the Member States shall inform the Commission thereof.

²² Reservation: COM wants legal certainty and to clarify that the competition is about port services and on markets to which access is not restricted as per Directive 2014/25/EU.

²³ The following recital, related to Article 6(4), will be added: “If 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 after, measures should be taken to avoid conflicts of interest and to ensure a fair and transparent market access to port services when the number of providers of port service is limited. Such measures can be, inter alia, 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.”

Article 7

Procedure for the choice 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 procedure to choose providers of port services which shall be open to all interested parties, non-discriminatory and transparent.
 - 1a. The procedure shall fulfil the following conditions:
 - (a) A port service contract notice, containing at least information on the port service to be provided, the award criteria, indications of how the relevant document can be accessed and the address and time limit for the submission of tenders, shall be published in the Official Journal of the European Union.
 - (b) The minimum time limit for receipt of tenders shall be 30 days from publication of the notice.
 - (c) All technical and functional requirements shall be communicated to interested parties.
 - (d) The award criteria shall not confer an unrestricted freedom of choice on the managing body of the port or the competent authority.
 - (e) The duration of the port service contract shall be limited on the basis of the nature of, the purpose of and the investments necessary for the service to which the contract relates.
2. [...]
3. [...]
4. [...]

5. For the purposes of this Regulation, a substantial modification of the provisions of a port service contract during its term shall be considered as the conclusion of a new port service contract and shall require a new procedure as referred to in paragraph 1.

This covers cases when the modification renders the contract materially different in character from the one initially concluded, including when the scope of the port service contract is considerably extended.

6. Paragraphs 1, 1a and 5 of this Article shall not apply in the cases referred to in Article 6(1)(bd) and Article 9.
7. This Regulation is without prejudice to Directive 2014/23/EU, Directive 2014/25/EU of the European Parliament and of the Council²⁴ and Directive 2014/24/EU of the European Parliament and of the Council²⁵.

Article 8²⁶

Public service obligations

1. Member States may decide to impose public service obligations related to port services on providers in order to ensure one or several of the following:
 - (a) the availability of the service without interruption during the day, the night, the week and the year;

²⁴ 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).

²⁵ 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).

²⁶ The following recital will be added: "While public service obligations are defined and designated by national authorities, a general obligation set by national or European legislation for a port to accept any vessel physically capable of entering and mooring without discrimination or hindrance should not be understood to be a public service obligation for the purposes of this Regulation."

- (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;
 - (cb) 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 port service providers established in the Union.
 3. Member States may entrust the right to impose public service obligation to a managing body of the port or a competent authority.
 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 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. 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.
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.
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' rights²⁷

1. This Regulation shall not affect the application of the social and labour rules of the Member States.
2. Without prejudice to national and Union law including collective agreements between social partners, the managing bodies of the port or the competent authority may require the designated provider of port services appointed in accordance with the procedure established by Article 7, in the case where this provider is different from the 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.

²⁷ The following recital will be added: "While this Regulation provides that the managing body of the port or the competent authority may require that the rights under Directive 2001/23/EC be granted to staff previously taken on by the outgoing provider, these rights should remain optional and there is no obligation imposed on Member States with regard to such cases."

Article 11
Exemptions

This Chapter and the transitional provisions of Article 24 shall not apply to cargo handling and passenger services.²⁸

Article 11a
National derogations

Member States may decide not to apply this Chapter and the transitional provisions of Article 24 to pilotage²⁹.

²⁸ ES has a strong reservation on the fact that the most important port services (cargo handling and passenger services) are excluded from market access rules. The Presidency draws the attention to the proposed changes to recital 20.

²⁹ Reservation: ES, FI, COM. LT prefers to see pilotage completely excluded from the scope of the Regulation. COM wishes that it is informed of any decisions not to apply the Regulation and related justifications.

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 dredging³⁰, within the port area which falls into the legal competence of the managing body of the port, itself, or other entity provides port services or dredging, within the port area which falls into the legal competence of the managing body of the port, on its behalf, it shall keep the accounts of that publicly funded port service activity 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.

³⁰ EE, ES, FI, NL and COM consider that dredging should be added in paragraph 1. LT strongly prefers to see dredging completely excluded from the scope.

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, 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, upon request, make available to the relevant national authority 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 rules³¹. Such information shall be made available to the Commission by the national 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.

³¹ The following recital on State aid rules will be added: "The establishment of a clear framework of transparent, fair and non-discriminatory provisions relating to funding and charging of port infrastructures and port services plays a fundamental role in ensuring that national port policies, as well as individual ports' commercial strategy, fully comply with competition rules. In particular, the transparency of financial relations will allow a fair and effective control of State aid, hence preventing market distortion. To that end, as recorded in the Council conclusions of 5 June 2014, the Commission is called upon to adopt State aid guidelines for maritime ports, with the aim of ensuring fair competition and a stable legal framework for port investment."

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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Article 13 Port service charges³³

1. In the cases referred to in Article 6(1)(b) and (ba), including as regards pilotage³⁴, the charges 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, 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.

³² FR, supported by EL, HR, UK: reservation on the deletion of the following paragraph: "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. In such case, the Member States shall inform the Commission thereof."

³³ The Presidency proposes to add the following recital: "**Without prejudice to EU competition rules, this Regulation should not interfere with the right of Member States, where applicable, to regulate charges in order to avoid over-charging of port services, in cases where the situation of the market of port services is such, that effective competition cannot be achieved.**"

³⁴ COM proposes to replace "including as regards pilotage" with "and in the cases of Article 11a". Support by BE, DK, FI, IE, NL and PT.

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 national ports policy and/or the individual port's commercial strategy and investment plan and comply with competition rules, where applicable.

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 relevant, transparent, objective and non-discriminatory^{35 36}. Port infrastructure charges may vary also in accordance with commercial practices ~~related inter alia to certain categories of users~~.³⁷
5. [...] ³⁸
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 infrastructures are informed of any changes in the nature and level of the port infrastructure charges at least two months in advance.
7. The managing body of the port shall, upon request, make available to the relevant national authority the information referred to in paragraphs 4 and 6. Such information shall be made available to the Commission by the national authority upon request.

³⁵ EL proposes to delete this sentence.

³⁶ The following recital will be added: "The variation of port infrastructure charges may result in rates being set at zero for certain categories of users, depending on the national port policy, the economic strategy of the port, port spatial planning policy or port commercial practices. Such categories of users could include, among others, hospital ships, vessels in scientific, cultural or humanitarian missions, tugs and floating service equipment of the port."

³⁷ The following recital will be added: "This Regulation should not interfere with the rights, where applicable, of the ports and their customers to agree commercially confidential discounts. This Regulation is not intended to require the disclosure to the public or to third parties of any such discounts. However, the managing body of the port or the competent authority should at least publish standard charges before any price differentiation."

³⁸ The following recital will be added: "The Commission, in cooperation with Member States, should elaborate guidance on common classification criteria for vessels for the purpose of voluntary environmental charging, taking into account internationally agreed standards." Reservation on the recital: EL.

CHAPTER IV – General and final provisions

Article 15

Consultation of port users and other stakeholders

1. Without prejudice to the competence on the issues listed in points (-a) to (ca) of this paragraph, the managing body of the port shall when appropriate consult representatives of port users, providers of port services and other relevant stakeholders at least on the following:
 - (-a) the charging policy;
 - (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;
 - (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.
2. [...]

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. 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).
4. [...]
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

1. In order to facilitate a uniform implementation of this Regulation, Member States shall as and when appropriate exchange general information about the activities referred to in Article 17 and the Commission may participate in and support such cooperation.
2. Member States shall cooperate for the purposes of mutual assistance in the activities required to handle cross-border complaints.
3. [...]
4. [...]
5. [...]

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.

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

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.

Article 21

[...]

1. [...]
2. [...]
3. [...]
4. [...]
5. [...]

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

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, accompanied, if appropriate, by relevant proposals.

Article 24

Transitional measures

1. Port service contracts and acts of equivalent effects concluded before ...^{*} 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 shall be aligned to this Regulation by 1 July 2025.

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

* 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

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