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**COMMISSION STAFF WORKING DOCUMENT**

**IMPACT ASSESSMENT**

*Accompanying the document*

**Proposal for a Regulation of the European Parliament and of the Council  
establishing a framework on the market access to port services and the financial  
transparency of ports**

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For the purpose of this report, port services refer to one or several of the eight following categories:

- Pilotage
- Towage
- Mooring
- Dredging
- Bunkering
- Cargo handling
- Passenger services
- Waste reception facilities

## **1. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES**

Lead DG: Directorate General for Mobility & Transport (DG MOVE)

Agenda planning: 2013/MOVE/0161

This initiative forms part of the Single Market Act II<sup>1</sup> (Oct. 2012) and contributes to the development of fully integrated networks to drive new growth. It was announced in the White Paper on Transport of 2011<sup>2</sup>. The initiative supplements and is closely related to the proposal for a regulation on Guidelines for the development of the trans-European transport network (TEN-T)<sup>3</sup> and the financial instrument "Connecting Europe Facility (CEF)"<sup>4</sup> (Oct. 2011).

### **1.1. Organisation and timing**

The preparatory work started after the adoption of the Transport White Paper. DG MOVE established a formal impact assessment steering group (IASG) in April 2012 in which the following directorates-general actively participated: SG, COMP, ECFIN, EMPL, EUSTAT, JRC, MARE, MARKT and REGIO. The IASG held five meetings, the last one on 6 February 2013. Participants were invited to different public consultation events.

### **1.2. Consultation of stakeholders and external expertise**

Due to the nature of the file (inter alia, issues related to performance of ports, port technical services, hinterland connectivity, governance structures, port infrastructure charges, funding of port investments or public service obligations in ports), DG MOVE decided to carry out a comprehensive targeted sectoral public consultation and not a full public consultation.

For that purpose, DG MOVE has kept an informal dialogue with the national administrations in charge of the ports' policy (Ministries of Transport). It held meetings with the main industry associations in the port sector, inter alia: port authorities (ESPO), private terminal operators (FEPORT), inland ports (EFIP), ship-owners (ECSA), pilots (EMPA), tug owners and operators (ETA), mooring operators (EBA), ship's agents (ECASBA), shippers (ESC), dredgers (EuDA) and logistic operators (CLECAT). DG MOVE also held meetings with the two main Unions of port workers, the International Dockers Council (IDC) and the dock workers' section of the European Transport Workers Federation (ETF). A sectoral dialogue committee could not be consulted, as this is still in the process of being set up.

The preparatory work was supported by an economic study on the quality and efficiency of European ports (PwC). The work took account of extensive research on transport economics, ports and logistics and involved several discussions with industry and research experts.

Stakeholders were consulted extensively through two targeted on-line surveys and an open stakeholders' two-day conference in Brussels (25-26 Sept. 2012)<sup>5</sup>.

Some stakeholders, namely the two main Unions of port workers, considered that the questionnaire designed by PwC for the on-line surveys was not appropriate, pointing out that the questionnaire did not allow them to express their views and that some questions were

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<sup>1</sup> Single Market Act II, together for new growth COM(2012)573

<sup>2</sup> White Paper on Transport: roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system COM/2011/144

<sup>3</sup> COM(2011) 650 final/2

<sup>4</sup> COM(2011) 665 final

<sup>5</sup> See website of the conference: <http://www.portsconference2012.eu/home.html>

leading and even prejudged the responses. Instead of participating in the survey, IDC and ETF sent their positions in written to DG MOVE<sup>6</sup>.

A final targeted<sup>7</sup> public hearing, presenting the key problems and discussing policy options and their possible impacts was held on 18 January 2013. IDC and ETF were invited and participated actively both in the ports policy conference and in the public hearing.

The main results<sup>8</sup> of the consultation process (2012-2013) can be summarised as follows:

- 1) All stakeholders stressed the need for a stable and fair level playing field both for inter-ports (competition between ports) and intra-port (competition between providers of a same port service within a port) competition in the EU. The need for legal certainty and a business friendly environment with as less administrative burden as possible is a priority for all stakeholders, such as Member States, port authorities, terminal operators or the shipping sector, logistic operators and cargo interests.
- 2) There is a major concern about unfair competition between ports linked to public funding practices of port infrastructures. Member States and port authorities request a tight control of state aid.
- 3) A significant part of the users of port services, shipping companies and export-import industries, consider that port services in many EU ports are not satisfactory in terms of price, quality and administrative burden. In the ports of the core TEN-T network, around half of the users surveyed (shipping lines) consider that there are specific challenges in terms of price or quality with cargo handling (48% complain), pilotage (54% complain) and towage (49% complain). A smaller percentage ranging from 17% to 25% sees similar problems for other services such as mooring, bunkering, dredging, passenger services or waste management.
- 4) 30% of European port authorities do not consider that the current situation is satisfactory. However, the majority of them oppose the introduction of EU procedures limiting the capacities of public authorities to grant contracts and permissions to operators of port services through direct award. Applying EU concession rules to certain contracts granted in ports is highly controversial in certain Member States.
- 5) Port workers' trade unions extremely oppose any EU provision touching on the existing port labour regimes in certain Member States, in particular in Mediterranean Member States. Representatives of pilotage services argue that pilotage, although provided against remuneration, is not an economic service and should be excluded from competitive pressure.
- 6) Most stakeholders agree that the EU port system has to evolve and adapt to significant challenges in terms of scarce funding resources, competitiveness vis-à-vis ports in neighbouring third countries and other world regions, creation of added value and jobs as well as coping with environmental impacts. They all agree on the importance to secure and, if possible, increase, EU funding expenditure for supporting ports and maritime transport.

### **1.3. Revision by the Impact Assessment Board**

A first version of this impact assessment report was submitted on 20 February 2013 to the Impact Assessment Board and discussed at a meeting convened on 20 March 2013.

This impact assessment report was comprehensively revised in the light of the opinion provided by the Impact Assessment Board on 22 March 2013. The main changes in this new version of the report concern: (1) a more precise description of the main problem, i.e. differences in port performance, links with hinterland congestion issues and internal market restrictions, (2) a clarification of the scope for application of horizontal instruments, i.a. EU internal market and transport policy acquis and competition rules, in the port sector, (3) more detailed data regarding the baseline scenario and future port capacity constraints assumptions, (4) a more detailed subsidiarity analysis, (5) a more fine-tuned presentation of objectives, (6) a

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<sup>6</sup> The public consultation process is presented in Annex VII. The critical views and final position of IDC and ETF were fully taken into account during the IA process. The links to the communications of both organisations are given in the annex.

<sup>7</sup> All main port industry associations, port workers unions and transport authorities in charge of ports' policy in the Member States were invited.

<sup>8</sup> The detailed results of the consultation are provided in Annex V. Moreover, the more detailed views of stakeholders are - where relevant - reflected in the other sections of this report.

more precise description of the links with the European Semester exercise and Structural Funds, as well as (7) further precisions on the impacts of the possible policy options on direct and indirect costs, maritime traffic impacts and possible distribution across different regions.

In addition, Annex II provides now an overview of recent and on-going port reforms and re-organisations in Member States; Annex V has been revised for better presenting the reactions of stakeholders to the questions of the on-line surveys; Annex VII has been revised with an extended presentation of the balance of demand and supply model for European ports up to 2030, and a more detailed description of the methodology underlying the assessment of impacts. Finally, Annex III contains the more recent and comprehensive statistics on shipping ports provided by Eurostat in March 2013.

## **2. GENERAL CONTEXT<sup>9</sup>**

### **2.1. Key figures**

Over 1.200 commercial seaports operate along some 70.000 kilometres of the Union's coasts. The proposal for TEN-T guidelines identified 319 TEN-T ports, of which 83 are recognised as core network ports<sup>10</sup>. Europe is one of the most dense port regions worldwide. In 2011, around 3.7 billion tonnes of cargo (more than 60 000 port calls of merchant ships) transited through European ports. Bulk traffic represented 70% of it, containers 18% and Ro-Ro traffic 7%, the rest being other general cargo. Figure 1 provides an overview of the main container ports and their logistical gateway function.

Ports play a crucial role for the external trade of the EU. They handle, in volume, 74% of the goods exported or imported to the EU and from the rest of the world. They ensure the security of supply of the EU in energy and other basic commodities. As the main trade bloc in the world, the EU is highly dependent on the maritime transport system.

In terms of intra-EU trade, ports handle about 37 % of the total internal market exchanges of goods (in ton km). Short sea shipping represents 60% of the tons handled in EU ports. The latter are key nodal points of the EU intermodal transport chains using short sea shipping as an alternative to saturated land transport routes or as a way to link peripheral or island areas. Figures<sup>11</sup> suggest that short sea freight flows in the EU have remained stagnant over the last decade.

In terms of passengers transport, ports service regional and local traffic to link peripheral and island areas. EU ports handled almost 385 million maritime passengers in 2011. This marked the third successive annual decline in passenger numbers, down 2 % compared with 2009. However, ports face growth for specialised traffic related to cruise ships (+7.1% since 2010).

Port costs account for a significant fraction of the total costs associated with the logistics chain. Handling cargo, port dues and port nautical services may make 40%-60% of the total door-to-door logistic costs for typical short sea shipping. However, for deep-sea shipping in modern

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<sup>9</sup> More information is provided in Annex II. Technical terms are further explained in the glossary (Annex XIII).

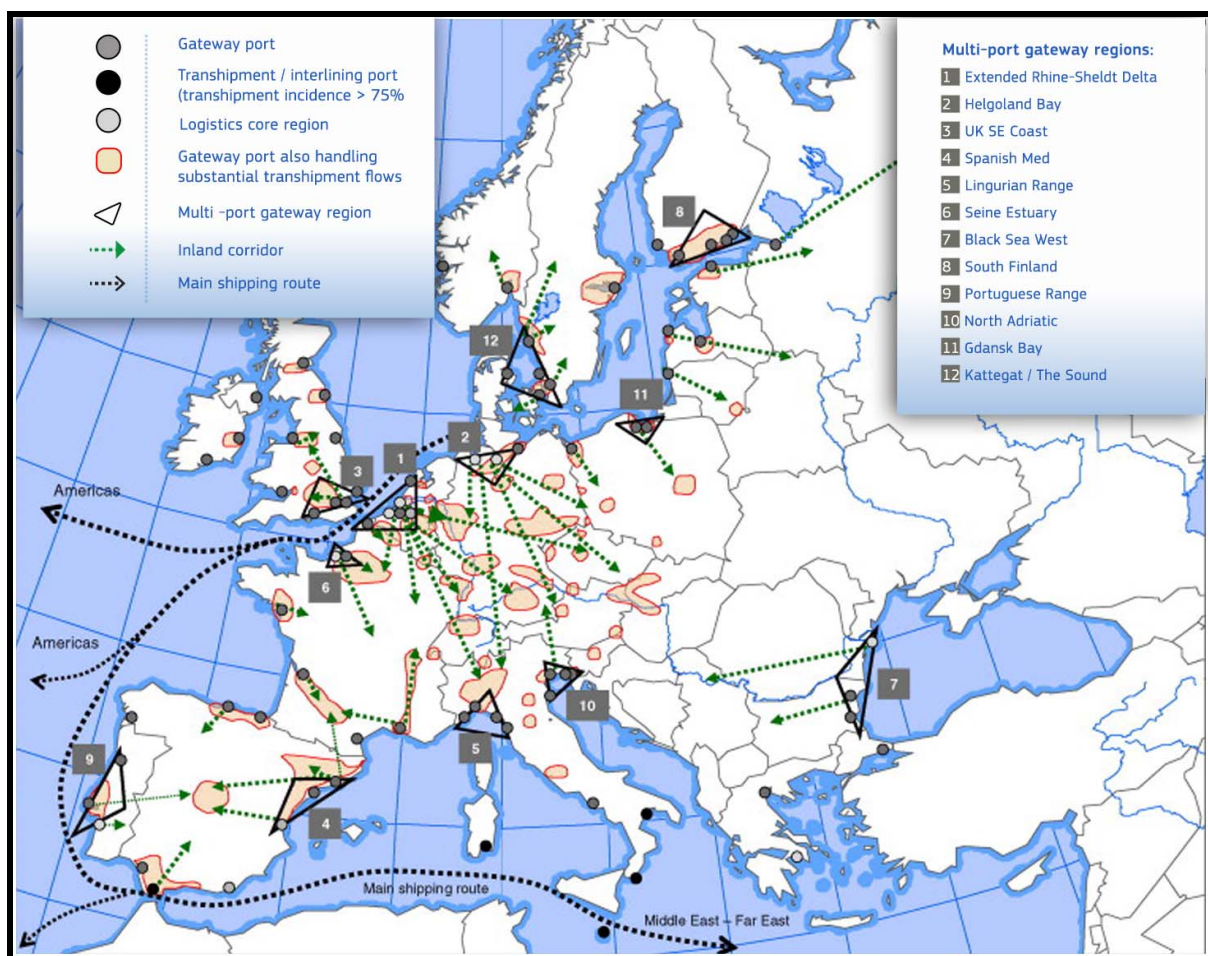
<sup>10</sup> The TEN-T network consists of two layers: 1) the comprehensive network will ensure full coverage of the EU and accessibility of all regions, to be completed by 2030, and 2) the core network that will feed into the comprehensive network and will prioritize the most important nodes of the TEN-T, and is to be completed by 2050. Detailed TEN-T port selection criteria can be found in the TEN-T proposal (COM (2011) 650 final/2). The final number of TEN-T ports will depend on the final outcome of the on-going ordinary legislative procedure.

<sup>11</sup> See Eurostat, 2010-2011 data – Statistics in Focus series



ports, using capital-intensive cargo-handling equipment and advanced IT systems, port costs can account for less than 4-5% of the total logistic costs<sup>12</sup>.

**Figure 1: Container ports and their logistical gateway function (Notteboom, 2010)**



Port activities contribute directly to employment, inward investment and GDP growth (up to 3% in the Netherlands). 2,200 port operators currently employ around 110,000 port dockers. A much larger labour force serves the port industry covering maintenance and operation of maritime infrastructures, ship operations and services, land transport, logistics activities, cargo services (e.g. freight forwarding and customs broking) etc. Ports represent 1.5 million direct jobs<sup>13</sup>. When adding indirect jobs, they represent a total of 3 million jobs in the 22 maritime Member States (Notteboom, 2010).

## 2.2. Functioning of the port: a chain of services<sup>14</sup>

A port is a gateway through which goods and passengers are transferred between ships and the shore. While the port as a whole can be seen as a link in a logistics chain, the port product is itself a chain of consecutive links<sup>15</sup>. The functioning of a port requires a number of services,

<sup>12</sup> See, e.g. Notteboom, Rodrigue and De Monie (2010), "The organisational and geographical ramifications of the 2008-09 financial crisis on the maritime shipping and port industries" or HPC Hamburg Port Consulting GMBH, "The role of ports in international transport chains" (2011)

<sup>13</sup> <http://pprism.espo.be/>

<sup>14</sup> A more detailed description of the chain of services in ports can be found in Annex II.

<sup>15</sup> Goss, R. Economic Policies and Seaports: 1. The Economic Functions of Seaports. "Maritime Policy and Management" 17(3): pp.207-219. (1990).

such as: provision of transport infrastructure, technical-nautical services (pilotage, towage, and mooring), operational infrastructure & equipment, cargo handling & passenger handling, waste reception facilities and ancillary (or general) services<sup>16</sup>.

The total EU port cost to the shipping industry is estimated at around €1-17 billion in 2010 (PwC, 2013). An indicative repartition of the relative weight of the different costs items of the total port operation costs is presented in the table 1<sup>17</sup>.

**Table 1: Indicative relative weight of port operation costs<sup>18</sup>**

|   | % of total costs |
|---|------------------|
| Port dues (provision of general infrastructure)       | 5%-10%           |
| Vessel technical services (pilotage, towage, mooring) | 10% - 15%        |
| Of which Pilotage                                     | 5%-6%            |
| Berthing costs  | 5%-15%           |
| Cargo handling operators                              | 45%-60%          |
| Waste reception                                       | 1%-5% %          |
| Others  | 5%-10%           |

### 2.3. Policy context

In contrast with other transport sectors, with exception to port waste reception facilities<sup>19</sup>, there is no EU legislation in the European port sector, be it on the access to the port services market, financial transparency or infrastructure charging<sup>20</sup>. The first step taken by the Commission to move towards a coherent ports policy was made in 1997, with the publication of a Green paper on that subject. In 2001, the Commission proposed a directive on market access to port services. This proposal was rejected by the European Parliament (EP) in 2003. In 2004, the Commission adopted a second proposal which was subsequently turned down and eventually withdrawn.

In 2007<sup>21</sup> the Commission came forward with a Communication on ports policy, announcing "soft" measures in the form of guidelines (state aids, environment), best practices (benchmarking, indicators) and close cooperation and dialogue with stakeholders. The problems identified at the time related to (a) threats on port performance and hinterland connections, (b) expanding capacity while respecting the environment, (c) modernisation of ports, (d) absence of clarity, for investors, operators and users and (e) issues on work in ports. An ex-post assessment of the progress achieved since 2007 is summarised below<sup>22</sup>:

1) The problems last identified in 2007 remain largely unsolved in spite of the adoption of a few of the envisaged measures. The main development has been the adoption of the proposal for the new TEN-T Guidelines and Connecting Europe Facility, both of which foresee substantial funding support for ports. The Commission also issued non-binding guidelines on the application of the birds and natural habitat directives in port areas.<sup>23</sup>

<sup>16</sup> See e.g. International Handbook of Maritime Economics, Cullinane and others (2010)

<sup>17</sup> The table is indicative only since the heterogeneity of ports and cargo-handling operations makes it extremely difficult to present values "valid for all".

<sup>18</sup> For a detailed presentation of the relative weight of port operation costs see Haralambides et al (2001), "Port Financing and Pricing in the EU: Theory, Politics and Reality and Haralambides H. (2012) "Ports: Engines of Growth and Employment". There are huge variations in the composition of costs from one port to another. "

<sup>19</sup> Directive 2000/59/EC on port reception facilities for ship-generated waste and cargo residues

<sup>20</sup> For instance, specific legislation exists for airport charging, allocation of slots, and ground handling services.

<sup>21</sup> See COM(2007)616 final

<sup>22</sup> See Annex IV for more detailed information

<sup>23</sup> See [http://ec.europa.eu/transport/modes/maritime/ports\\_en.htm](http://ec.europa.eu/transport/modes/maritime/ports_en.htm)

2) As of 2011, in the context of the European Semester exercise, the Commission has included reforms in the port sector as a part of the Country Specific Recommendations addressed to the Member States. In the cases of Greece, Ireland and Portugal, measures involving important port reforms have been undertaken in the context of the Economic Adjustment Programmes.

3) Although initially envisaged by the 2007 Communication, the Commission does not intend anymore to adopt specific guidelines for state aid to ports. The main reason is that the case law from the Court of Justice has recently evolved and clarified certain issues (the case T-443/08 "Leipzig-Halle"), in particular that public financing of the construction of (airport) infrastructure constitutes state aid. The only exception concerns certain activities that are part of the exercise of public powers (security, police etc.). This judgement requires careful reflections for all sectors with heavy infrastructures such as the port sector. Moreover, the Commission will come forward with a modernisation of its state aid rules for all economic sectors by the end of 2013.

4) Contrary to expectations, the development of intra-EU maritime transport connections supporting internal market exchanges has stagnated. Inter-modality objectives have been largely missed.

5) In 2011, the Commission adopted a proposal for a Directive on Concessions<sup>24</sup>. This proposal applies to concession contracts granted in ports. Though, as there are other forms of awarding contracts in ports (like for instance land leases or authorisations) in parallel and as alternatives to concessions, this will lead to a situation where not all port service contracts would be subject to the same legal regime and European framework.

A Court of Auditors report (2012)<sup>25</sup> has shown that investments in port facilities create limited European value added if they are not connected as multimodal nodes to the national and regional transport network. Therefore, the CEF and the cohesion policy will give priority to projects concerning port access and hinterland connections to ensure that TEN-T ports, are developed as multimodal nodes which can clearly demonstrate, by performing a thorough cost benefit analysis, that they are desirable from the economic and financial point of view.<sup>26</sup>

As far as the different Member States are concerned, several of them have in the past years<sup>27</sup> reviewed their port policy. For example, Germany (2003), Finland (2010), France (2008) and Spain (2004) have undertaken reforms of their respective port sectors, including their port labour market. Moreover, in the context of the structural adjustments required by the Conditional Assistance Programme to Member States in financial difficulties, a radical reform of the ports regulatory regimes has been required in Greece, Portugal and Ireland<sup>28</sup>. Some other Member States however, have not significantly changed their national ports framework.

The differences in degree, scope and eventual impact of the policy developments at national level involve a risk of further fragmentation of the Internal Market, with Member States adopting dissimilar approaches on market access conditions, transparency of public funding and charging policies or administrative requirements<sup>29</sup>.

#### TEN-T, CEF and Structural Funds support to ports

Ports and connections of ports with the hinterland (motorways, railways and inland navigation channels) are key transport infrastructures for economic development. Over the years, in the context of the TEN-T and of the Structural Funds, the EU has provided constant and substantial funding for the completion, renewal and maintenance of those infrastructures in all maritime regions of the EU. As stated above, the EU funding effort supporting those infrastructures will continue in the years to come. The precise amounts to be allocated will depend on the final

<sup>24</sup> COM(2011)987final of 20 December 2011

<sup>25</sup> See <http://eca.europa.eu/portal/pls/portal/docs/1/14050737.PDF>

<sup>26</sup> The Commission is currently updating the Cost Benefit Analysis Guide (2008).

<sup>27</sup> See Annex II – point 10 "Overview of recent and on-going port reforms and re-organisations in selected European countries"

<sup>28</sup> This is an on-going process - See [http://ec.europa.eu/economy\\_finance/assistance\\_eu\\_ms/index\\_en.htm](http://ec.europa.eu/economy_finance/assistance_eu_ms/index_en.htm)

<sup>29</sup> A detailed description of the situation in different Member States is given Annex II

decision on the multiannual financial perspectives and of the assessment made by the Commission of the proposals submitted by Member States under the different EU funding instruments. As recalled by the Court of Auditors, it is of extreme importance that the EU effort sustaining ports delivers good returns in terms of performance and overall contribution to the objectives of the European Transport Policy.

Under this policy context, the Commission has emphasised in 2011 and 2012, in its White Paper on Transport and in the Single Market Act II the need to review its ports policy.

#### 2.4. Diversity of ports in the EU<sup>30</sup>

European ports have historically developed in their own diverse ways, even when located in the same country<sup>31</sup>. Large gateway ports, hub ports transshipping goods from large to smaller vessels, medium-sized and smaller ports each have specific characteristics in terms of hinterland markets served, commodities handled and locational qualities.

On a geographical basis, one usually distinguishes the maritime coastlines of the continent (Baltic, North Sea, Atlantic, Mediterranean, and Black Sea) or ranges of neighbouring, competing ports (e.g. Hamburg-Le Havre range). 20% of the EU cargo handling takes place in the ports of Rotterdam, Antwerp and Hamburg. The nine largest ports of the Mediterranean account for 20% of the total.

The port governance structure also differs. In a significant number of ports, the government both owns the land, the infrastructure and the equipment, and runs the entire operation of all the services provided in the port. At the other end of the spectrum, in a number of ports, the landlord is a private owner and private interests provide the services. The dominant structure for port governance in Europe follows the landlord model, with public ownership of the land and infrastructure. Typically, port authorities finance large, long-term infrastructure investments from public funds. At the same time, many of them organise the provision of port services and act as referees on intra-port competition matters.

**Table 2: Ownership of port authorities (ESPO, European Port Governance report 2010)<sup>32</sup>**

|                              | Hanse         | New Hanse     | Anglo-Saxon   | Latin         | New Latin     |
|------------------------------|---------------|---------------|---------------|---------------|---------------|
| <b>Publicly owned ports</b>  | <b>96.0%</b>  | <b>84.1%</b>  | <b>47.1%</b>  | <b>75.0%</b>  | <b>90.6%</b>  |
| National Authority           | 6.5%          | 71.3%         | 35.3%         | 64.4%         | 87.3%         |
| Region                       | 2.5%          | 0.0%          | 0.0%          | 7.9%          | 0.0%          |
| Province                     | 4.3%          | 0.0%          | 0.0%          | 2.7%          | 0.0%          |
| Municipality                 | 82.7%         | 12.8%         | 11.8%         | 0.0%          | 3.3%          |
| <b>Privately owned ports</b> | <b>4.0%</b>   | <b>0.0%</b>   | <b>8.8%</b>   | <b>0.7%</b>   | <b>0.0%</b>   |
| <b>Other</b>                 | <b>0.0%</b>   | <b>15.9%</b>  | <b>44.1%</b>  | <b>24.3%</b>  | <b>9.4%</b>   |
| <b>Total</b>                 | <b>100.0%</b> | <b>100.0%</b> | <b>100.0%</b> | <b>100.0%</b> | <b>100.0%</b> |

<sup>30</sup>See ESPO (2010) Report "European Port Governance" –

[http://www.espo.be/images/stories/Publications/studies\\_reports\\_surveys/espofactfindingreport2010.pdf#](http://www.espo.be/images/stories/Publications/studies_reports_surveys/espofactfindingreport2010.pdf#). A more detailed analysis of Europe's port heterogeneity is to be found in Annex II.

<sup>31</sup> See, e.g. Verhoeven (2009, 2010, 2011) – European Sea Ports Organisation, Fact Finding Reports

<sup>32</sup> The categorisation made by ESPO, the "typology of regions" includes the following Member States: 1) "Hanse Region": Belgium, Denmark, Finland, Germany, The Netherlands and Sweden, 2) "New Hanse": Estonia, Latvia, Lithuania and Poland, 3) "Anglo-Saxon": Ireland and UK, 4) "Latin": Cyprus, France, Greece, Italy, Malta, Portugal and Spain and 5) "New Latin": Bulgaria, Romania and Slovenia.

Table 2 provides an overview of the ownership structure in the different regions. The ESPO 2010 European Port Governance report concludes that "*the Hanseatic and Latin governance traditions of municipal and state influence are clearly confirmed (the 'other' category for Latin port authorities includes Italian port authorities which are de facto controlled by the state). Port authorities in Anglo-Saxon countries are either owned by the state (Irish ports), municipalities, and financial suitors or take the form of trust ports (UK ports). State ownership dominates for port authorities in the new regions.*"

It should be noted that, under all different models of port ownership (public, private or mixed regimes), there are cases of excellent, well performing ports and cases of ports where problems of performance and long term decline have been reported. The TFEU rules are neutral in respect of forms of ownership of ports in the Member States and this impact assessment does not draw any conclusions in that regard.

### **3. PROBLEM DEFINITION**

#### **3.1. Description of the main problem**

*The main problem is the structural performance gap in some TEN-T seaports. The problem is exacerbated by the need to adapt ports to new transport and logistics requirements at a moment of scarce public funding. This creates risks of congestion and puts at risk an efficient, interconnected and sustainable TEN-T and therefore the functioning of the internal market.*

When adopting the proposal for new TEN-T guidelines and the CEF, the Commission set ambitious goals to develop an efficient, interconnected and sustainable TEN-T. But without tackling the port-related problems, achieving these goals could be at risk. Seaports are the TEN-T interface between land and sea and their performance determines to a large extent the fluidity of both land traffic (in their broad hinterland areas) and of short sea traffic (in the maritime exchanges and redistribution of cargoes to other EU ports). Structural weaknesses on performance in certain ports lead to congestion problems and undermine the achievement of a sustainable transport system<sup>33</sup>.

##### **3.1.1. Structural performance gap in ports and impact on the hinterland and congestions**

Differences in ports performance is a normal market feature resulting from a variety of factors including specialisation and strengthening of competitive advantages. From the perspective of the EU transport system, it could be expected that, over the years, the trend for all EU ports is to improve progressively performance, i.e. their capacity to adapt to the economic development requirements of the regions they serve (hinterlands). In recent years, while some EU ports have improved their performance by international standards, other EU ports have lagged behind, to the extent that some Member States have expressed concern about the structural decline of their port systems.

In the context of the European semester exercise<sup>34</sup>, the need for improving the contribution of ports to economic recovery and growth, both in terms of performance and modernisation are part of the country-specific recommendations addressed to a number of Member States<sup>35</sup>.

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<sup>33</sup> For a broader presentation, see the Transport White Paper 2011 "Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system"

<sup>34</sup> See latest synthesis reports, 4 March 2013, <http://register.consilium.europa.eu/pdf/en/13/st06/st06754.en13.pdf>

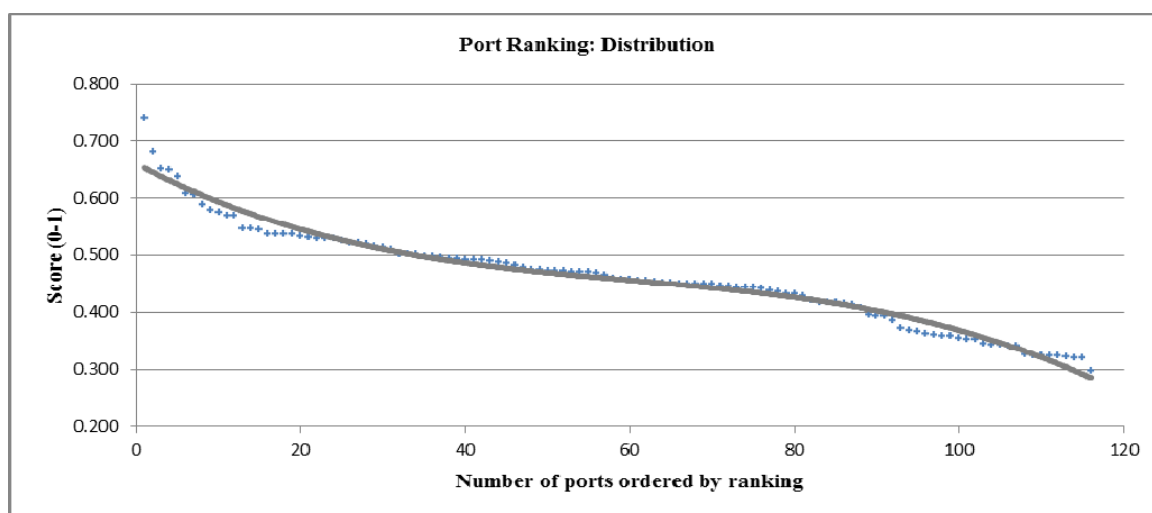
EU Ports are part of a network industry. A chain is only as strong as its weakest point. The fact that some TEN-T seaports have a low performance reduces the transport choices. This in turn accentuates the polarization of flows to hubs where the hinterland is congested. It also means a lost opportunity to develop SSS as alternative to saturated land transport routes and to better link peripheral and island areas. Overall it means a suboptimal functioning of the TEN-T.

The relative performance of TEN-T ports by international standards has been examined by PwC by means of a model based on data from the World Economic Forum, market shares per cargo categories and a proxy variable for measuring inter-port rivalry. Under the assumptions of the model a “well-performing” port is one that is located in a country where functioning of ports obtains a high rating in terms of users' appreciation and which achieves a high market share in circumstances where there is a high degree of inter-port rivalry.

The model has been applied to a representative sample of 115 TEN-T ports for the purpose of obtaining useful insight on port services performance, while recognising that there can be other factors, such as physical geography (e.g. distance from the sea, location of rivers) affecting performance. A detailed presentation of the model is given in Annex VII<sup>36</sup>.

The results show a mixed picture: five ports are performing in the top category (25% of the relative ranking); 23 ports perform well (a relative score between 75%-50%); 51 ports perform moderate (between 50%-25%) and 36 ports have a relative low performance (lower than 25%). Figure 2 shows this distribution.<sup>37</sup>

**Figure 2: performance distribution of EU ports (sample of 115 ports) (PwC, 2013)**



While some ports seem underperforming and underutilised, other high performing ports have had or will have to face capacity and connectivity problems related to the need to rapidly

<sup>35</sup> The port sector is mentioned in the Commission's Staff Working Documents (SWD) on the following Member States: BE, CY, DE, DK, EST, SP, FIN, FR, IT, MT, NL, SLO and UK

<sup>36</sup> The model used for the purposes of the IA benchmarks the relative performance of the ports included in the sample. However, it has to be stressed that, like most other rankings in business, the ranking methodology is not perfect and the results have to be interpreted with all necessary precaution. For one, the index cannot reflect all the complexity of ports, ports services and types of cargoes. Moreover, the data refers to a given period of time (The 2012-2013 Global Competitiveness Report of the World Economic Forum (WEF) and the more recent Eurostat port statistics. Those differences are not necessarily linked to the availability and/or quality of physical infrastructures: in a number of cases, well-equipped ports perform below average (cf PwC, 2013 / annex VII).

<sup>37</sup> Because of potential commercial impacts on specific ports, the Commission does not disclose the names of the ports in the different categories; a list of the considered ports can be found in Annex VI.

evacuate from the port huge volumes of cargoes (containers trades, but also roll-on roll-off traffics).

It should be noted that other models examining the relative performance of EU ports exists<sup>38</sup> and that different research sources, including those of the World Economic Forum or the OECD referred to above consistently show significant differences of performance in EU ports

Congestion in the port hinterlands has a high external cost in the densely populated areas along the major TEN-T hubs. The cost of road congestion is estimated to 1-2% of the EU GDP, i.e. EUR 122-245 billion<sup>39</sup> and congestion is on average significantly higher in the broad hinterland of the major EU hubs (e.g. Benelux).

Congestion in ports is more difficult to appreciate. Port congestion already occurred in 2004, the year considered as the peak of globalisation in terms of trade (see table 3). For some trades, door-to-door logistic cost for European industries rose by 10% in 2004 because of such port congestion<sup>40</sup>. Although the congestion issue has been put on hold during the recession, the baseline scenario indicates that intra-port congestion will come back sooner or later in certain maritime ranges, due to the growth of traffic (see section 3.4).

**Table 3: North European Containers Deep Sea Ports Utilisation 2004 (Drewry Shipping Consultants & CLECAT)<sup>41</sup>**

| Port          | Capacity Utilisation |
|---------------|----------------------|
| Le Havre      | 89.6%                |
| Antwerp       | 92.9%                |
| Rotterdam     | 92.5%                |
| Bremerhaven   | 95.5%                |
| Hamburg       | 93.2%                |
| Southampton   | 99.3%                |
| Felixstowe    | 77.1%                |
| Total average | 86.6%                |

Major hubs ports have developed strategies to improve their rail and inland waterway hinterland connections, in line with the ideas of the TEN-T policy. For example, the port of Rotterdam is developing a rail and inland shipping programme for addressing the major road transport connectivity challenge posed by the expected growth<sup>42</sup>:

"Where currently about 6.8 million TEU travel to and from Rotterdam across the European continent - mainly by truck - expectations are that this will increase to 20 million TEU by 2035. By that time, the Port of Rotterdam Authority will bind customers to move 45 % of their hinterland transport from the Maasvlakte by inland shipping and 20 % by rail. In the current modal split, these percentages are respectively 39 % and 13.5 %"

A complementary strategy is to provide cargo streams with attractive multiple alternative routes in the same catchment area, which requires that all the ports on these alternative routes

<sup>38</sup> See, e.g. Ducruet and van der Horst (2009) "Transport Integration at European Ports: measuring the role and position of intermediaries" or de Langen, van Meijeren and Tavasszy (2012) "Combining Models and Commodity Chain Research for Making Long-Term Projections of Port Throughput: an Application to the Hamburg-Le Havre Range.

<sup>39</sup> White Paper – Roadmap to a Single European Transport Area / Christidis, Ibanez Rivas, *Measuring road congestion*, JRC Technical Notes, 2012 / CE Delft, INFRAS, Fraunhofer ISI, *External Costs of Transport in Europe*, Delft, November 2011.

<sup>40</sup> See research on congestion; e.g. EFFORT RTD Project [http://www.transport-research.info/web/projects/project\\_details.cfm?ID=28076](http://www.transport-research.info/web/projects/project_details.cfm?ID=28076), International Transport Forum "The Extent of and Outlook for Congestion, in Inland, Maritime and Air Transport (2007)

<sup>41</sup> A capacity utilisation >80% entails overtime and incapacity to absorb traffic peaks, while an index > 90% entails heavy congestion in the port and its hinterland).

<sup>42</sup> <http://www.portofrotterdam.com/en/Business/about-the-port/connections/Pages/Intermodaltransport.aspx>

offer comparable performance levels. The performance gaps between ports also undermine the development of short sea shipping, be it "hub and spoke" operations<sup>43</sup>, Ro-Ro or other forms of short sea shipping (SSS). By avoiding additional cargo transport in the usually saturated hinterland of the major European hubs, SSS contributes to sustainable transport. However, SSS requires performing ports at the two ends.

SSS has a greater transport capacity than road haulage which considerably reduces the costs per cargo. Though, several factors affect the competitive edge of SSS. The two most commonly accepted are the complexity of administrative formalities (including customs procedures) which are different to what applies to the competing intra EU road transport,<sup>44</sup> and the low efficiency of ports.

From an EU-wide perspective, poor performance of certain ports penalises short sea shipping and multimodal transport solutions in ports. It also aggravates road transport congestion problems in other ports and puts strain on long-haul road corridors in the EU (crossings of EU and non-EU land locked regions).

Hence, at several occasions, EU Member States have stressed<sup>45</sup> the necessity of more flexible and efficient port services allowing shipping services to offer frequent sailings at any time, as well as guaranteeing high-speed operations throughout the logistical chain and a quick turn-around time for ships in the port:

Extract from Council Conclusion 11-12 December 2006 on Short Sea Shipping (SSS)

- Promotion should, in particular, continue urging market players to integrate Short Sea Shipping more tightly into the whole transport logistics supply chain, inter alia by developing ports, as strategic nodes, and links to the hinterland, and services;
- Ports, as efficient and seamless nodal points for transshipment between the land and the sea, should further enhance and improve their services for Short Sea Shipping; work towards ensuring high-quality services and unrestricted and efficient access to ports from sea and from the hinterland should continue;

### 3.1.2. Need to adapt to transport and logistics changes

The performance problem referred to above is compounded by the fact that new transport and logistics requirements have emerged to which ports need to adapt. The changes potentially make a part of the existing port capacity obsolete or require an infrastructure upgrade. In the discussion about the nature and extent of the problem, stakeholders identified a number of trends and signals of change that are appearing today and that are expected to become increasingly significant in the future. Those trends and signals of change (see also section 3.4) are:

- Increased size and complexity of the fleet, in particular ultra-large container ships, but also new types of Ro-Ro ferries and gas-carriers. The bigger ships pose a challenge of high peak capacity when delivering more cargo/boxes or (dis)embarking a high number of passengers in a single visit. For instance the new ship "Marco-Polo" owned by CMA

<sup>43</sup> "hub-and-spoke" organisations are increasingly used in modern logistics and consist in the reception, transshipment and redistribution of cargoes to/from deep-sea exchanges to/from short-sea exchanges. In a survey at global level, it was found that only 16% of all country pairs are directly connected, while 62% of all country pairs require at least one transshipment and 18.6% of all pairs require two transshipments (International Maritime Forum 2010, Maritime Transportation: drivers for the shipping and port industries)

<sup>44</sup> This problem will be tackled by an upcoming Commission initiative on "Blue Belt". Customs simplifications already exist for maritime transport but further simplifications will be envisaged.

<sup>45</sup> [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/trans/92120.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/trans/92120.pdf)



in operation since November 2012 has a capacity of 16,000 containers and a length of 396 m. Maersk has ordered 20 ships for 2015 with a capacity of 18,000 containers. This is the equivalent of a theoretical loaded train of 280 km (distance between Rotterdam and Dusseldorf).

- Deployment of bigger vessels for short sea shipping and feeder services, with new needs in terms of energy efficiency, alternative bunkering fuels and environmental performance (LNG, cold ironing<sup>46</sup>).
- Trends in logistics and distribution systems that attract more value added services within a port's area (relevant to the rules for competition within the port and for charging schemes).
- Significant changes in the energy trades, with a shift from oil and oil refined products towards gas; need for significant gasification facilities in ports; potential volumes of dry biomass and CO2 transport and storage; shore-side electricity supply.

These changes place intense pressure in terms of infrastructure and investments: extension of berth, quay, deepening of basins and canals, reconfiguration to enable manoeuvring of larger ships. They require new facilities and operational procedures: cranes, new passenger terminals etc. However, public funding has become scarcer as a result of the economic crisis; hence the need to focus public funds on the most efficient port investment projects. Moreover since as a result of the recession, the return on investments of private funding may be lower than expected<sup>47</sup>, ports may appear as a less attractive venue for financial firms.

Lastly, port capacity should ideally be available where it is needed, including in response to changes in inland distribution and ship call patterns that may occur. Therefore, capacity needs to be available at a wide range of locations for matching evolving demand needs, possibly with fluctuations of traffic between ports, creating occasional surplus and shortages in capacities.

### **3.2. Underlying drivers of the problem**

Three main underlying drivers of the problem have been identified: 1) port services and operations in some TEN-T seaports are suboptimal; 2) the current port governance framework in some TEN-T seaports does not provide enough incentives to attract investments and 3) inadequate connections with the hinterland, notably by rail and inland waterways. Problem driver (3) is already addressed by the above mentioned TEN-T and CEF proposals, and by the new cohesion policy (better planning of interventions by cohesion and structural funds). Therefore, it is not further analysed in this report. Other potential problem drivers such as persisting credit restrictions, curtailing private investments, leading to a technological standstill in the coming years, either go beyond the immediate regulatory intervention scope of the EU or are already covered by other EU initiatives not related to transport. They are therefore not further considered in this impact assessment.

Therefore, the section below presents evidence for the remaining underlying drivers 1) and 2). It does not imply that those drivers are present or have the same extent in every port. Nevertheless, each of them can be illustrated with concrete cases. The root causes of each of

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<sup>46</sup> Cold ironing or shore side electricity supply: where vessels connect to share for energy supply instead of having to use their on board generators.

<sup>47</sup> Considering the recession and recent port developments in the range Le Havre – Hamburg (Maasvlakte-2 in Rotterdam, London DP World Gateway, Hamburg Eurogate or Jade Weser Port in Wilhelmshaven) some analysts predict overcapacity until 2020.

these drivers developed below are linked to typical regulatory and market failures which explains that self-regulation cannot provide a solution.

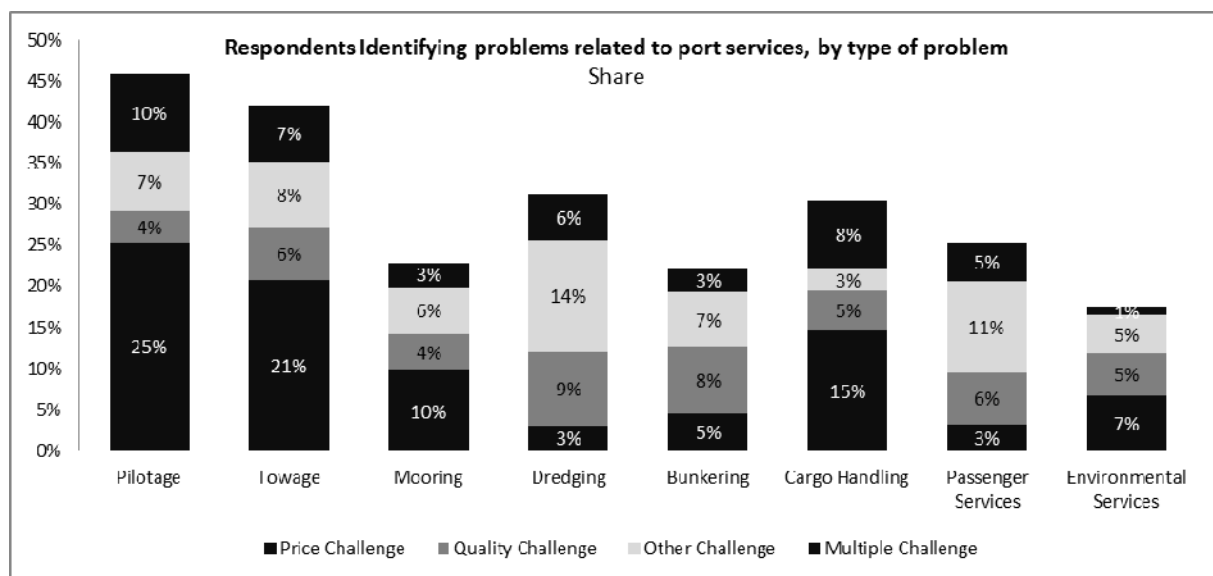
### 3.2.1. Suboptimal port services and operations in some TEN-T seaports

Ports provide a chain of services. Suboptimal port services prevent the chain from operating in an efficient way. They prevent the network as a whole from functioning efficiently and to cope with the expected changes in transport demand. Port capability and efficiency can greatly influence the decision for locating a plant or distribution centre, and often determine whether a local producer can compete globally or regionally with other producers. The challenge is for ports to relate to the needs of their customers and assist them in improving their competitive positions by providing cost-efficient port services and by contributing to the sustainable development of the transport chain.

On the basis of discussions with stakeholders, evidence collected through the business surveys (opinions of users of port services) and academic research, the instances of suboptimal port services can be attributed to three main root causes: (1) weak competitive pressure in the port services market resulting from market access restrictions (2) market abuses by port service providers with special or exclusive rights and (3) administrative burden due to lack of coordination within ports.

Table 4 below gives a stakeholder's appreciation of the price and quality of the port services. Although the results only reflect perceptions and do not yield general conclusion applicable to all ports, they clearly point out a degree of dissatisfaction in certain seaports.

**Table 4: problems identified by stakeholders per type of services in EU ports (PwC, 2013)**



#### 3.2.1.1. Root cause 1: Weak competitive pressure in the port services market resulting from market access restrictions

Competitive pressure means that port operators have to make a constant effort to satisfy users' needs. Such competition helps to facilitate specialisation because competitors are competing under the same conditions. Specialisation in turn helps to improve cost efficiencies. However, the extent of this intra-port competition can be limited by market access restrictions:

##### Market access restrictions

National legislation, regulatory authorities or port authorities may limit *de jure* or *de facto* the possibilities of market entry. It can be linked to reasons of lack of space limiting the number of

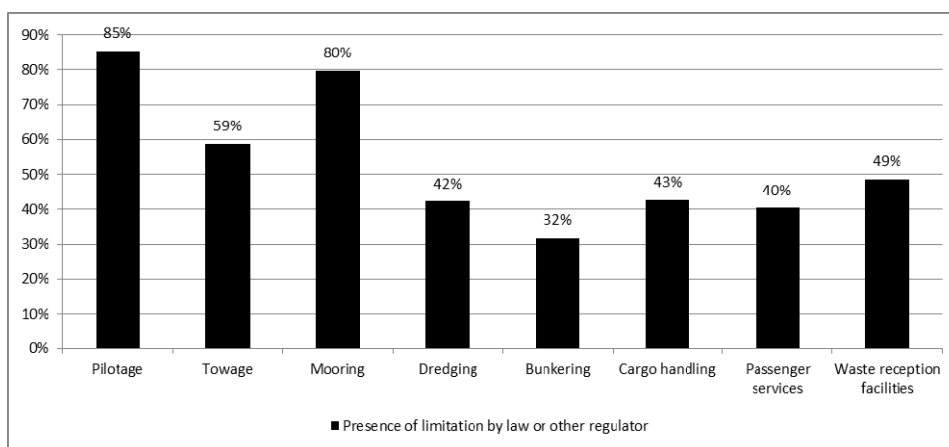
operators (e.g. terminals) or because certain activities are considered to be public services (imposing safety requirements e.g. pilotage). It can also be linked to state monopolies, historical contracts with incumbent operators, and/or existence of restricted professions.

Examples known<sup>48</sup> from complaints or reports from stakeholders include:

- Monopolistic rights with a long standing history, notably for technical-nautical services (pilotage, boatmen and towage). In some Member States the providers of those services fall under the category of regulated professions with long standing exclusive rights. The possibility to create new SMEs and jobs for those services (or for innovative services closely related) is seriously restricted or does not exist at all.
- Discretionary decisions of a public authority to grant or deny access to the port to a provider of port services or to impose disproportionate requirements. In certain Member States, market access often follows a “close door” negotiation: interested parties do not have even notice of the market opportunity. Appeals and complaints against such unilateral decisions are costly, take very long and often rejected because the local legislation authorises such decisions by port authorities.
- Denial of fair access to land in the port, assignation of a less favoured part of the port or lack of legal certainty on the authorisation granted by the port authority, i.e. possibility to impose unilateral changes or revoking access decisions without appeal procedures.

Table 5 gives a broad indication of the presence of legal/regulatory market access restrictions for different ports services in EU ports. The 2012-2013 survey indicates de jure restrictions in 32% of the cases (for bunkering) and 85% (pilots). They also vary across Member States and even within Member State.

**Table 5: Share of respondents indicating limitations to competitions by law/regulation (PwC, 2013)**



### Degree of competition in the market

Table 6 presents the share of ports where more than one operator provides a particular service. Figures are broken down by type of service. Intra-port competition is low in pilotage (only 12%) and not frequent for other technical-nautical services. By contrast, services indicated with a higher competitive pressure are bunkering (54%) and passenger services (48%). On cargo handling, although some market access restrictions were indicated (table 5), services are often

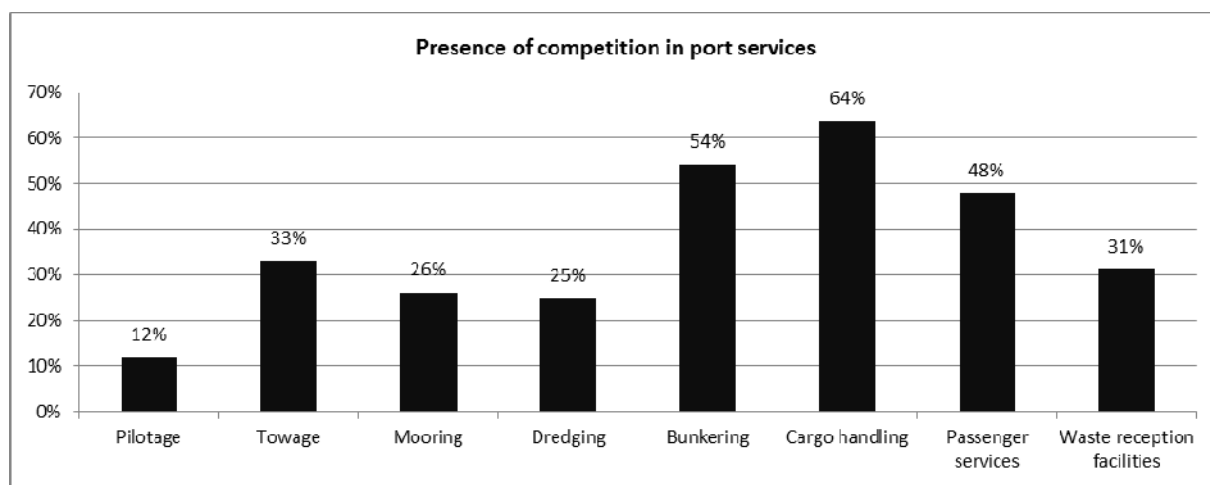
<sup>48</sup> Examples are based on concrete data affecting particular ports and/or undertakings in the sector. Due to the (commercial, legal, etc.) interests involved, names of ports, undertakings and Member States where those practices are notorious are voluntarily omitted in this report.

provided in a competitive environment (64% of responding ports – table 6), and inter-port competition also often applies in this case. Annex II gives examples of the number of operators in key major ports.

### Competition for the market

In the 2012 PwC Survey, port authorities were asked to describe the awarding process for the operation of main terminals and for port services: it was reported that the same port can have several different procedures in place to award contracts (e.g. for different terminals, operational areas, port services). Especially in the event where different awarding procedures are used for terminal awarding or service contracts, this puts the level-playing field into question and presents a possible distortion of competition. It is to be noted that, in certain Member States, port land rental or lease contracts can be granted by public authorities to commercial operators without following public procurement or concession rules.

**Table 6: Presence of more than one operator per type of service (PwC, 2013)**



### ***Stakeholders' point of view***

Port authorities, port services providers and terminal operators recognise that market entry barriers exist. However, they reckon that for a number of services it may be justified and that in any case the lifting of these barriers is a matter for national competence. By contrast, shipping lines do not agree and consider that the freedom of service principle should be introduced.

#### 3.2.1.2. Root cause 2: Market abuses by port service providers in monopolistic or oligopolistic positions

A wide range of potential abuses of market power can occur in ports as a result of the many instances of market access restrictions described in the previous section and notably the exclusive rights or special rights granted by the State or the port authorities. A notorious abuse is the obligation to pay for pilotage services when entering the port even if the service is not needed and/or effectively provided.

Market abuses can also stem from *de facto* monopolistic or oligopolistic positions facilitated and /or reinforced by various degrees of integration between infrastructure providers and port

users<sup>49</sup> and the difficulty to have access to facilities which are essential to provide port services<sup>50</sup>.

Some examples of market power abuse practices<sup>51</sup> are, inter alia:

- Excessive pricing to users, i.e. charging a price which is excessive because it has no reasonable relation to the economic value of the product supplied (ECJ definition)
- Refusal to supply, i.e. refusing access to the port to an operator involved in commercial passenger or freight shipping.
- Favourable treatment to incumbent operators, including subsidies: incumbent operators can receive particularly advantageous conditions, for example lower fees for port land lease contracts, obtain the best locations in the port or receive public subsidies for supporting their commercial activities.

In practice, this has led to complaints and even court proceedings by the national competition authorities or the Commission. There is substantive case law in terms of Commission Decisions' and Court of Justice judgements' on market abuses. Some examples:

- **Italy**: cargo-handling monopoly, Port of Genova<sup>52</sup>
- **France**: refusal of access to LNG Terminals, Port of Fos<sup>53</sup>
- **Germany**: refusal to supply, Port of Puttgarden<sup>54</sup>
- **Sweden**: excessive pricing, Port of Helsingborg<sup>55</sup>
- **Portugal**: Tug services cartel, Port of Setubal<sup>56</sup>

However, in many other cases, abuses linked to the exclusive or special rights of port operators cannot be easily legally challenged. Complaints are costly and time consuming for the potential complainants, in particular SMEs. Moreover, in absence of secondary EU legislation implementing the principle of freedom to provide services in the port sector cannot be used to avoid abuses of monopolistic practices.

### ***Stakeholders' point of view***

Stakeholders recognise that, in some EU ports, market abuses by regulators, policy-makers or port authorities can occur. On one hand, port authorities and incumbent terminal operators consider that port service providers must keep a discretionary power in the management of the service, including the definition of price. In their view, competition authorities are already now well placed to intervene. On the other hand, port service users and would-be new entrants highlight that in absence of EU legislation, abuses cannot be easily challenged.

<sup>49</sup> Another frequently mentioned issue is the vertical integration between terminal operators and shipping lines which may give rise to abuse and distortion of competition on the shipping market (see Annex II for a more detailed discussion)

<sup>50</sup> See OECD "Competition in Ports and Port Services 2011

<http://www.oecd.org/regreform/liberalisationandcompetitioninterventioninregulatedsectors/48837794.pdf>

<sup>51</sup> See Competition concerns in ports and port services, OECD / DG COMP (2011)

[http://ec.europa.eu/competition/international/multilateral/2011\\_jun\\_ports.pdf](http://ec.europa.eu/competition/international/multilateral/2011_jun_ports.pdf)

<sup>52</sup> Judgement of the EU Court of 10 December 1991, case C-179/90

<sup>53</sup> Case of the Port of Fos is COMP/39.316 – Gaz de France, decision du 3.12.2009 (case related to the LNG Terminal)

<sup>54</sup> Decision of the German competition authority - Bundeskartellamt (2010), 'Bundeskartellamt opens up the Puttgarden-Rødby ferry route to competition', January

<sup>55</sup> Commission decision of 2004 - 'Scandlines Sverige AB v Port of Helsingborg', Case COMP/A.36.568/D3.

<sup>56</sup> Decision of Portuguese competition authority of 2007 - Autoridade da Concorrência (2007), 'CA detect cartel operating in the Port of Setúbal and imposes fine of €185,000', April

### 3.2.1.3. Root cause 3: Users face excessive administrative burden due to lack of adequate coordination

The main causes of excessive administrative burden in ports that are usually mentioned are:

- the effect of cumulative regulation (international/EU, national and local sources) touching on different aspects of the port activity;
- lack of harmonisation of interfaces and between ports and ships and a lack of regulatory harmonisation at EU level;
- conflicting goals: e.g. trade facilitation vs. law enforcement, port revenue collection vs. available human resources, etc. and
- a lack of coordination between different administrations and poor interaction between the public and private sector agents within ports.

Below an illustration<sup>57</sup> of the excessive administrative burden:

“The survey demonstrates that as many as 150 separate actions may be needed to get a ship into a port, perform cargo operations and sail to the next port, many of which must be carried out in the very short timeframe allowed by the vessel’s schedule. Any delay in the progress of the port call, compliance with statutory requirements or arranging the delivery or collection of the cargo can have a significant effect on the cost of the call (and thus on the overall voyage) and on the vessel’s subsequent employment. There is very little consistency in the way these functions are handled – at the international, regional and even local level”.

The Commission will tackle issues related to the further simplification of customs procedures for intra-EU freight traffic in EU ports by means of the upcoming initiative on "Blue Belt"<sup>58</sup>. The Commission is also working on issues related to the inter-connection and/or interoperability of port IT systems in the context of the so-called "e-maritime" initiative<sup>59</sup>.

However, those initiatives do not touch on the issue of lack of coordination of different activities that are part of the same chain of services within the port. Some EU ports make proactive efforts to facilitate users' needs in terms of administrative simplification, introducing quality standards and customer care departments. However, the PwC Survey reveals that while good practices exist (e.g. DK, NL, UK) there is serious lack of coordination between different administrations in too many EU ports (see table 7).

To tackle similar issues in airports, EU legislation<sup>60</sup> has introduced the requirement of giving users the possibility to exchange information and ideas and allow the concerns of interested parties to be raised and taken into account by the airport authorities on important decisions such as charging. Such committees provide customer orientation and a flexible coordination instrument by means of which port authorities and administrations listen to the users and users can interact to combine their activities to provide a better service to final users. Costs resulting from unnecessary administrative burden in ports are extremely difficult to estimate. The following table summarises the overall views resulting from the business survey (opinions of users) carried out in the context of the public consultation>

**Table 7: Users views on coordination of administrative requirements in EU ports (PwC, 2013)**

|                               | North Sea | Atlantic | Baltic Sea | West Med | East Med | Black Sea |
|-------------------------------|-----------|----------|------------|----------|----------|-----------|
| Shippers / Freight forwarders | +++       |          | ++         | ++       | +        | +         |
| Shipping Companies            | +++       | +        | +          | ++       | +        | +         |

<sup>57</sup> See: Port Procedures Survey, FONASBA, December 2012, [http://www.fonasba.com/author/fonasba\\_admin](http://www.fonasba.com/author/fonasba_admin)

<sup>58</sup> [http://europa.eu/rapid/press-release\\_SPEECH-12-425\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-12-425_en.htm)

<sup>59</sup> [http://ec.europa.eu/transport/modes/maritime/e-maritime\\_en.htm](http://ec.europa.eu/transport/modes/maritime/e-maritime_en.htm)

<sup>60</sup> Directive on airports ground-handling.

|                          |   |    |   |    |   |   |
|--------------------------|---|----|---|----|---|---|
| Other logistic operators | +++   | ++ | + | ++ | + | + |
| +++                      | : "Users friendly", i.e. good coordination, transparent procedures, customers consultation structures |    |   |    |   |   |
| ++                       | : Lack of coordination, relatively transparent procedures, occasional consultation                    |    |   |    |   |   |
| +                        | : Lack of coordination, uncertainty of results (time required), no consultation                       |    |   |    |   |   |

### *Stakeholders' point of view*

Stakeholders (users of port services and certain port authorities) largely agree on the three causes of administrative burden. They estimate that the administrative complexity can be effectively addressed by improving the coordination of services and procedures inside the port.

### **3.2.2. Port governance frameworks not attractive enough for investments in all TEN-T seaports**

In order not to put at risk a more efficient, interconnected and sustainable TEN-T and cope with the expected traffic changes, ports need optimised port services (driver 1), but also new investments (driver 2). To attract these investments, the right governance frameworks must be in place, which does not seem to be the case for all ports.

According to projections carried out<sup>61</sup>, the port infrastructure required to meet future demand would require 12% of total infrastructure investments (from €150 to €200 billion) until 2030. There are regional variations, e.g. the Baltic region shows a need for start-up investments, whilst the North Sea and Mediterranean regions require strong investments in modernisation schemes. For the period 2015-2030, the overall funding needs for maritime transport infrastructures could easily exceed € 100 billion just to maintain current capacity levels. European Port Authorities have expressed very serious concerns about the investment gap that looms in the coming years as a result of the difficult state of public funding in the Member States, the reductions of the funds allocated for transport infrastructures in the EU financial perspectives 2014-2020<sup>62</sup> and the consequences of the economic crisis on private funding availability.

The current context of scarce public funding imposes a higher selectivity in granting public funds to port investments<sup>63</sup>. It will demand more than ever a careful scrutiny to avoid waste of scarce resources and distortions of competition between ports arising from public subsidies (see report of the Court of Auditors – Annexe II).

The fact that current port governance frameworks do not provide enough incentives to attract investments in all TEN-T seaports can be explained by several "root causes": 1) inadequate infrastructure planning and poor strategic planning and ex-ante cost benefit analysis procedures (this cause is highlighted in the report of the European Court of Auditors 2013<sup>64</sup>), 2) market access restrictions which may deter investors (see root cause 1 above), 3) unclear financial relations between public authorities, port authorities and port services providers and 4) weak autonomy of ports to define infrastructure charges and non-transparent link with costs. The last two root causes are further explained below.

<sup>61</sup> See preparatory work for the Transport White Paper by the Joint Research Centre (2011): [http://ec.europa.eu/transport/themes/strategies/2011\\_white\\_paper\\_en.htm](http://ec.europa.eu/transport/themes/strategies/2011_white_paper_en.htm)

<sup>62</sup> See: "Ports urge European leaders not to cut in Transport Infrastructure budget" [http://www.espo.be/index.php?option=com\\_content&view=article&id=356:ports-urge-european-leaders-not-to-cut-in-transport-infrastructure-budget&catid=34:espo-news&Itemid=109](http://www.espo.be/index.php?option=com_content&view=article&id=356:ports-urge-european-leaders-not-to-cut-in-transport-infrastructure-budget&catid=34:espo-news&Itemid=109) (February 2013)

<sup>63</sup> <http://www.port-investor.com/espo-presentation/> reference

<sup>64</sup> Strategic planning and sound economic assessment of port infrastructural projects will be tackled by the new Regulation on TEN-T Guidelines and by the new approach to Structural Funds

### 3.2.2.1. Root cause 4: Unclear financial relations between public authorities, port authorities and providers of port services

Transparency is a necessary precondition to attract investments, even if not sufficient<sup>65</sup>. Transparency, together with non-discrimination and a level playing field, is one of the key policy requirements for a sound and stable investment environment offering a lower degree of uncertainties on profit returns for all. Transparent information on how port authorities use public funds is a critical determinant in the investment decision of port services providers by contributing to a better predictability. It is especially important for small and medium sized enterprises that tend to face particular challenges to entering the market.

In many occasions, the Commission and others have expressed the view that the current level of transparency in the port sector is inadequate to trace flows and uses of public funding within port entities, which are, at the same time, engaged in both port management and commercial activities within ports. The financial transparency problem appears at two different levels:

- The flow of public funding from the national, regional or local authority to the managing body of the ports: i.e. how much public funding is received;
- The use of that funding by the managing body of the port: i.e. allocation of public funds to support both statutory "public authority" functions and provision of port services, i.e. possible cross-subsidization of incumbent port service providers

Use of subsidies to ensure the viability of incumbent port service providers means a *de facto* market barrier for new entrants and investors. For instance cross-subsidies can artificially decrease the incumbent's costs and allow the incumbent to undercut the newcomer's prices.

More in general, the ability to absorb losses and cross-subsidize operations within the port impacts the balance and intensity of competition: it discourages new entrants, who have to over-invest to be present in the market, reduces the competitive pressure to improve efficiency of incumbent operators and leads to distortions in the allocation of investment resources<sup>66</sup>.

A Commission study on the public funding of European ports<sup>67</sup> concluded that, in absence of reporting and accounting obligations, it is not possible to ascertain both the volume of funds granted to ports and the use of those funds in the port for public functions and commercial operations. The problem was largely confirmed by a 2011 study carried out by the European Parliament<sup>68</sup>.

Although Directive 2006/111/EC<sup>69</sup> on the transparency of financial relations between Member States and public undertakings already imposes minimum requirements in terms of transparency, it only applies to undertakings with an annual turnover higher than €40 million. According to the PwC 2013 survey, only 36% of ports analysed exceed this threshold. Even on the core network, the survey indicates that only half of them would fall in the scope of the Directive. Further analysis indicates that while 79% of TEN-T ports are involved in at least one port service, a significant share has no separate account which could allow possible distortive

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<sup>65</sup> OECD report, A framework for investment policy transparency (2003),

<http://www.oecd.org/daf/internationalinvestment/investmentpolicy/16793978.pdf>

<sup>66</sup> for an economic review on this question, see World Bank "The Evolution of Ports in a competitive world, 2007", , [http://www.ppiaf.org/sites/ppiaf.org/files/documents/toolkits/Portoolkit/Toolkit/pdf/modules/02\\_TOOLKIT\\_Module2.pdf](http://www.ppiaf.org/sites/ppiaf.org/files/documents/toolkits/Portoolkit/Toolkit/pdf/modules/02_TOOLKIT_Module2.pdf)–

<sup>67</sup> By ISL Bremen, see [http://ec.europa.eu/transport/modes/maritime/studies/doc/2006\\_06\\_eu\\_seaports\\_study.pdf](http://ec.europa.eu/transport/modes/maritime/studies/doc/2006_06_eu_seaports_study.pdf)

<sup>68</sup> <http://www.europarl.europa.eu/committees/en/tran/studiesdownload.html?file=66171>

<sup>69</sup> Commission Directive 2006/111/EC on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings ("Transparency Directive")



state aids to be identified or traced. As such, addressing the existence of state aid and its compatibility with the EU state aid rules is rather complicated. See table 8.

**Table 8: TEN-T Ports accounting practices, Source DG MOVE based on PwC Survey (2013) & ESPO (2010)**

| Port Accounting Practice   | % of ports                  |
|--|-----------------------------|
| Ports applying the Financial Transparency Directive (€40 million turn-over)* | Less than 50% <sup>70</sup> |
| Ports not keeping separate accounts from the Public Administration           | Around 20%                  |
| Ports not keeping accounts according to accounting standards                 | More than 40%               |
| Ports not required to audit accounting by external experts                   | More than 40%               |
| Ports not publishing annual accounts   | More than 40%               |
| Port Authorities involved in the provision of port commercial services       | More than 95%               |
| Ports not applying internal analytical accounting to activities and services | More than 40%               |

### *Stakeholders' point of view*

Several stakeholders, including most port authorities, point to the lack of financial transparency. It gives rise to suspicion and recrimination between ports, be it justified or not, about unfair competition between ports encouraged by Member States public funding practices.

#### 3.2.2.2. Root cause 5: Weak autonomy of ports to define infrastructure charges and non-transparent link with costs

Efficient pricing is a prerequisite for making efficient infrastructure investments (Winston, 1991).

While public ports should aim to maximize user welfare, given the growth in demand, they may need to evaluate their pricing approach in order to reduce the financial burden and consider the competition with private ports.

This section highlight that current infrastructure charges cannot always be set autonomously by port authorities and that they rarely reflect real costs in an efficient way. Similarly, port dues do not always send the correct price signals which incentivise users to take into account their external costs<sup>71</sup>.

#### Autonomy of port authorities in setting port infrastructure charges

There is broad academic transport research<sup>72</sup> suggesting that port authorities should be allowed to have autonomy in terms of obtaining revenues from their activity as port managers in order to use those resources in a more pro-active management approach. Port dues form the most important source of operating income (see table 9). A wide autonomy for setting general port dues help port authorities to design optimised pricing policies which accommodate both their own commercial and investment strategies.

In a survey carried out on behalf of the Commission in 2011, it was found that 34% of ports have no responsibility for setting ship and port infrastructure charges. This for example because port charges can be 1) unilaterally imposed by public authorities independently of the use of infrastructure, 2) retributions, or simply prices, i.e. charges for commercial ports. Only 48% set and approve the charges in a full autonomous manner ("Study of the public funding of

<sup>70</sup>In around 11% of TEN-T core ports (PwC, 2013), establishing the turn-over threshold from the Transparency Directive is problematic, precisely because of the (lack of) port accounting practices.

<sup>71</sup> In the specific case of waste reception facilities, basic principles on pricing have been introduced. Though, it has been acknowledged that transparency remains a challenge in order to ensure a cost-based approach in line with the polluter pays principle.

<sup>72</sup> See, e.g. Haralambides, (2002, 2012) "Port Financing and Pricing in the European Union"

port infrastructure", NEA, 2011). Moreover, the indicative relative weight of the port dues in the total port operation cost ranges from 5 to 10% (see table 1).

**Table 9: Average operating incoming profile of European port authorities (ESPO Fact Finding report, 2011)**

| Income source                     | Average % |
|-----------------------------------|-----------|
| Income from general port dues     | 49%       |
| Income from land lease or similar | 25%       |
| Income from services              | 16%       |
| Other income                      | 10%       |

### Efficient pricing of port infrastructure

The principles of port public infrastructure pricing have been extensively discussed in transportation economics<sup>73</sup>. Pricing strategies, such as lowering charges (port dues or terminal handling charges or both) in order to compete against other ports, can be used to boost port's competitive positions. Ultimately the pricing scheme should correspond to market conditions and to counter competition, stimulate market growth and improve profitability (Yap et al., 2011). There is no fundamental difference between investments in port infrastructure and other capital-intensive investments in industrial complexes. Therefore, there should be no reason for adopting a completely different approach to port investments, and consequently no reason why direct users should not bear the costs of such investments. Moreover, the introduction of market principles in infrastructure pricing would be the most effective remedy to avoid the risk of creating wasteful overcapacity and possible distortions of trade flows (except in the case of pricing maritime access and protection infrastructure).

An illustrative case: In January 2013, German port operator, Eurogate, has confirmed that it is pushing ahead with legal action against harbour dues at Wilhelmshaven's JadeWeserPort, the port authority of Germany's newest container terminal at the country's only deep sea water port. Eurogate, complaints JadeWeserPort authority's decision to grant allegedly up to a 70% rebate on dues for the first 18 months, followed by a 50% rebate for the following six years to Eurogate competitors. See: <http://www.portfinanceinternational.com/categories/regulation-policy/item/663-eurogate-confirms-legal-battle-at-wilhelmshaven,-germany-s-newest-port>

There is no uniform model, even within Member States. The most frequently used criteria in TEN-T ports for establishing port charges are (a) the type, size (gross tonnage) and/or cargo capacity of the vessel, (b) the type and volume of cargo and (c) the time in port. Other criteria are judged to be "rather complex, un-transparent and archaic"<sup>74</sup>.

The evidence collected suggests that in many ports, the criteria used to establish charges and rebates or discounts on those charges is seen to be based on arbitrary decisions<sup>75</sup>. The PwC survey shows that, in many cases, port charges appear to be fixed and altered with rebates depending on market developments, according to variations in charges in competing ports. This

<sup>73</sup> See, e.g. <http://www.ukessays.com/essays/geography/port-pricing.php#ixzz2Ef5PGRiQ>

e.g. <http://www.ppiaf.org/sites/ppiaf.org/files/documents/toolkits/Portoolkit/Toolkit/index.html>

<sup>74</sup> See, e.g. Haralambides, Erasmus University Rotterdam, presentation at the EU ports conference September 2012 "it is no longer acceptable to expend public resources on the development of, principally private, infrastructure intended to 'steal' cargo from each other among members of a Union". See: [http://www.academia.edu/2096342/Ports\\_Engines\\_for\\_Growth\\_and\\_Employment](http://www.academia.edu/2096342/Ports_Engines_for_Growth_and_Employment) or see also H. Meersman, E. Van de Voorde and T. Vanelislander (Antwerp, 2002)

<sup>75</sup> The perceptions of users of services appear in cases of non-transparent (or very difficult to understand) charging systems.

has occasioned many debates<sup>76</sup> on allegedly covert subsidising, predatory pricing and possible distortion of competition between neighbouring ports and/or operators in those ports.

#### Lack of incentives rewarding environmental efforts<sup>77</sup>

The past years have seen increasing concerns on the environmental impact of maritime transport, in particular air pollution<sup>78</sup>. Ships that call at ports are a major source of air pollutants such as CO<sub>2</sub>, SO<sub>2</sub> and NO<sub>x</sub>. The health effects impacting the residents surrounding major ports (respiratory diseases, cardiovascular diseases, lung cancer and premature mortality) and distorting the natural ecosystem are well documented<sup>79</sup>. Traffic growth means that those external costs risk increase unless there is significant change in ships' fuels and propulsion technologies. An EU and international regulatory approach has been implemented as regards the sulphur content of fuel, the waste management<sup>80</sup> and more recently the provision of LNG fuel in core ports<sup>81</sup>. However, economic incentives, including by means of differentiated port dues, can be used to reward compliance with standards/practices not binding yet or to encourage innovative cleaner solutions.

In a voluntary manner, some European ports have set up such rewarding schemes. Discounts on port charges of up to 10% can be granted based on participation in the Environmental Ship Index scheme<sup>82</sup> (Belgium, France, Germany and the Netherlands), of 20% based on the Green Award certificate<sup>83</sup> (Latvia, Lithuania, the Netherlands and Portugal), or 50% though rebates linked to NO<sub>x</sub>/SO<sub>x</sub> emissions or via levying a sulphur fee (Sweden).

With few exceptions, such practices are limited to a number of ports. Some stakeholders put forward that, in absence of a common framework, port charges variations resulting from those schemes can entail discrimination and/or unfair commercial practices between ports. It was also argued that the environmental rebates are usually too small and that there is a lack of consistent application at regional level. As a result, environmental differentiation is more seen as part of the port marketing strategy than an effective tool to influence the fleet composition.

By contrast, port charging encouraging short sea shipping, with rebates exceeding 50% in certain ports (notably transshipment operations for which the market is highly volatile)<sup>84</sup> seems to be widely used in large parts. They contribute to attract a high level of feeder services which provide the fine distribution within the region. Although contributing to the White Paper objective to develop shorts-sea shipping, those schemes - which are based on the origin and the destination of the vessels - may raise legal uncertainties as to their compatibility with the

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<sup>76</sup> E.g. in 2012, Germany's State Ministry of Economic Affairs, the Hamburg Port Authority and port service providers agreed to significantly reduce the Port of Hamburg's calling costs for large ships in order to strengthen the port's competitiveness, in response to the continuing delay in deepening the channel of the River Elbe.

<sup>77</sup> See Notteboom and others, [www.porteconomics.eu/.../501-2012-iaeme-the-green-port-toolbox](http://www.porteconomics.eu/.../501-2012-iaeme-the-green-port-toolbox)

<sup>78</sup> The Commission is working on monitoring the emission of greenhouse gasses from ships. For ship generated waste, agreements have been made under MARPOL.

<sup>79</sup> Lashof and Ahuja (1990), Bailey and Solomon (2004), Tzannatos (2010), Villalba and Gemechu (2011), others.

<sup>80</sup> In addition, Directive 2000/59/EC on port reception facilities for ship-generated waste and cargo residues, requires ports to provide waste reception facilities and vessels are, against a waste charge, obligated to make use of these facilities. The charges are always differentiated based on the certain characteristics of the ship, such as gross or net tonnage, engine power, or volume

<sup>81</sup> Next to the proposed requirement for TEN-T ports, the Commission has proposed a Clean Power for Transport legislation, obliging all core TEN-T ports to have LNG bunkering facilities at the disposal of ships by 2020.

<sup>82</sup> The Environmental Ship Index is based on ship emissions of local pollutants, such as NO<sub>x</sub>, SO<sub>x</sub>, particulate matter, and GHG. Source: [http://www.wpci.nl/projects/environmental\\_ship\\_index.php](http://www.wpci.nl/projects/environmental_ship_index.php)

<sup>83</sup> The Green Award certification scheme focuses on crew, operational, environmental and managerial elements. Source: <http://www.greenaward.org/greenaward/>

<sup>84</sup> See, e.g. <http://news.portdebarcelona.cat/eng/noticia.php?id=42&p=1>

TFEU, notably Article 18 which prohibits any discrimination on ground of the nationality and therefore possibly on ground of the origin or the destination of the vessel.

### *Stakeholders' point of view*

Stakeholders, both users and providers of port services agree that greater financial autonomy of port authorities could contribute to better use of resources and more performing, customers' oriented ports.

### **3.2.3. Linking the problem to its drivers and root causes**

**Table 10: Links between the main problem, its drivers and root causes**

| General problem: Structural performance gaps in some TEN-T seaports; need to modernise ports to new transport and logistics requirements at a moment of scarce public funding. | Root causes   |
|--|---|
| Driver 1: Sub-optimal port services and operations in some TEN-T seaports  | Root cause 1: Weak competitive pressure in the port services market resulting from market access restrictions         |
|  | Root cause 2: Market abuses by port service providers with exclusive or special rights                                |
|  | Root cause 3: Users face excessive administrative burden due to a lack of coordination within ports                   |
| Driver 2: Port governance frameworks not attractive enough for investments in all TEN-T seaports   | Root cause 4: Unclear financial relations between public authorities, port authorities and providers of port services |
|  | Root cause 5: Weak autonomy of port authorities to define infrastructure charges and non-transparent link with costs  |

### **3.3. Who is affected by the problem?**

**Table 11: Affected parties and their key interests**

| Stakeholder                                      | Description  | Key interests   |
|--|--|---|
| <b>Port Authorities</b>                          | Public or private bodies that own and/or manage the ports  | Developing the port in the context of a national, regional or local policy and/or maintaining profitability of the ports. A level playing field for inter-ports competition |
| <b>Port dependent businesses &amp; operators</b> | Business and operators dependent on access to the port, e.g. terminal operators, stevedoring pools               | Maintaining profitability and employment; legal certainty and a fair level playing field for intra-port competition   |
| <b>Port workers</b>                              | Human resources of port authorities and port dependent business and operators                                    | Pay and employment conditions, health and safety in the workplace, training and professional careers  |
| <b>Shipping sector</b>                           | Shipping companies providing EU and international seaborne trade & maritime passenger services                   | Cost-efficient and reliable port services (cargo-handling, technical nautical services, port environmental services, passenger services)                                    |
| <b>Sector regulators</b>                         | National, regional and local bodies regulating ports   | Ensuring an efficient, effective and practical management framework that balances a wide range of stakeholder needs   |
| <b>Freight forwarders and shipping agents</b>    | Agents and logistic companies organising or facilitating freight trade exchanges intra-EU and with world markets | Availability, cost, quality and reliability of ports services   |
| <b>Maritime</b>                                  | Citizens travelling by sea (ferry crossings,   | Availability, cost, quality and reliability of ports  |

|                       |   |  |
|-----------------------|---|--|
| <b>passengers</b>     | cruise-ships)   | services   |
| <b>EU industries</b>  | Businesses depending on maritime transportation for their supply needs and for their exports, covering a very broad range of industrial sectors | Availability, cost, quality and reliability of ports services          |
| <b>Final consumer</b> | Citizens benefiting from the choice, availability and prices of goods delivered by sea-borne trade  | Availability, cost, quality and reliability of ports services          |
| <b>Tax payers</b>     | Citizens indirectly providing public funding to ports   | Sound use of resources, economic and social returns, opportunity costs |

### 3.4. Application of EU horizontal instruments (Internal market and competition rules)

Over the years, the Commission has received complaints about abusive restrictions imposed to port operators by the national authorities (port regulatory regimes) and abuses of dominant position by incumbent operators. In a number of cases, the Commission has carried out an investigation to examine compliance of regulatory regimes with the EU Internal market, transport and Competition rules (acquis in the transport sector). However, in absence of EU port legislation implementing the freedom to provide services; those complaints could not be systematically followed up. This lack of reaction could have led interested parties to desist from presenting new cases to the Commission.

Moreover, throughout the consultation process a distinct aversion by port users to declare distortions and abuses was noted. Users fear that in the future they would be discriminated and have to suffer delays and lower quality of service. Ports are full of situations of “delicate balance”, whereby problems are settled by some sort of “ad-hoc facilitation” and rarely become public. Complaints in cases of abuse require long litigation, often impossible for SMEs for which the procedure is too long and costly. Big companies with bargaining power can enter into bilateral agreements with port authorities, without concerns about possible anti-trust limitations.

The application of competition rules in the port sector<sup>85</sup> was examined by the OECD in 2011. The OECD report shows that many of the national competition authorities recognise the need for sector specific rules to provide legal certainty to all operators, reduce the scope for abuses, pursue complaints and redress situations more effectively.

In 2012, the Commission introduced a proposal regarding the granting of concessions by public authorities in the EU. The proposal will cover concession contracts used in the port sector. The adoption of the proposal by the European Parliament and Council and its possible impact in the sector has been taken into account in the baseline scenario (section 3.5) and in the analysis of options (section 6).

Finally, it should be noted that, in the current situation, there are a number of instruments, such as the Directive on Financial Transparency of public undertakings that just do not apply to a significant number of TEN-T ports. Similarly, the Commission's strategy on the internalisation of external costs foresees sector-specific instruments on infrastructure charging to be developed but no common EU horizontal rules. In respect of State Aid, the Commission has announced its intention to provide clarifications on the notion of State aid in the context of

<sup>85</sup> <http://www.oecd.org/daf/competition/48837794.pdf>

public financing of infrastructures. There are no sector-specific guidelines explaining the Commission's approach to the enforcement of State Aid rules in the port sector.

### 3.5. How would the problem evolve, all things being equal

This section analyses future developments until 2030 in a scenario that assumes a status quo of existing policies and already planned policy reforms. The status quo involves progressive changes both at EU level and in individual Member States, resulting inter alia, from past reforms at national level and possible further reforms resulting from the Country Specific Recommendations (European Semester exercise), the impact of the Directive on Concessions in ports (entry into force year 2015) or foreseen modernisation of State aid rules. However, the status quo assumes that those possible reforms will not lead to the establishment of a level playing field for all TEN-T ports in respect of the problems identified in sections 3.1 to 3.3.

The assessment carried out demonstrates that all things being equal, the expected transport growth and changes in shipping logistics, combined with the persisting gap in the performance of ports observed today, would cause capacity problems and aggravate the un-balanced use of the network, thereby threatening the good functioning of the internal transport market.

According to the traffic projections updated by IHS-Fairplay in 2010<sup>86</sup> and by PwC (2013)<sup>87</sup>, the overall volumes handled in EU27 ports will grow from 3.6 billion tonnes in 2011 to 5.8 billion tonnes in 2030 in a low growth scenario<sup>88</sup>. EU ports would therefore have to handle 2.2 billion tonnes more than today, which exceeds the capacity resulting from all the port expansion projects known at this stage in the EU. These results are consistent with research<sup>89</sup>.

**Table 12: EU 2030 port traffic by region of loading/unloading (PWC (2013))**

| Region         | Container       | Dry Bulk        | Liquid Bulk     | RoRo          | Other Cargo   | Total           |
|----------------|-----------------|-----------------|-----------------|---------------|---------------|-----------------|
| UK/Ireland     | 125.74          | 155.43          | 297.49          | 137.46        | 35.26         | 751.39          |
| Nordic         | 50.53           | 187.66          | 240.30          | 122.01        | 81.87         | 682.37          |
| South Baltic   | 19.91           | 158.09          | 88.92           | 17.68         | 39.39         | 323.98          |
| Hamburg-France | 595.58          | 434.53          | 571.20          | 186.83        | 138.26        | 1,926.40        |
| Iberia         | 217.28          | 176.38          | 213.45          | 38.34         | 50.98         | 696.44          |
| Italy/Malta    | 179.00          | 112.67          | 261.87          | 80.05         | 64.24         | 697.83          |
| Balkan/Aegean  | 120.80          | 156.28          | 122.21          | 50.50         | 128.72        | 578.51          |
| Black Sea      | 8.22            | 69.73           | 28.90           | 1.53          | 37.81         | 146.19          |
| <b>Total</b>   | <b>1,317.06</b> | <b>1,450.77</b> | <b>1,824.34</b> | <b>634.40</b> | <b>576.53</b> | <b>5,803.11</b> |

Port Traffic in the container sector will be higher than in the bulk sectors. When taking container capacity evolution as a proxy for considering congestion risks in EU ports, it appears that, by 2030, container traffic growth will exceed 85% i.e. 3.2% year on year growth. On this basis it is plausible that capacity in EU container terminals will reach 145-155 million TEU based on existing planned developments. The changing requirements of shipping companies

<sup>86</sup> Optimar Study – see [http://ec.europa.eu/transport/modes/maritime/studies/doc/2010\\_optimar\\_study.pdf](http://ec.europa.eu/transport/modes/maritime/studies/doc/2010_optimar_study.pdf)

<sup>87</sup> PwC, 2013 (Trans-tool bases estimated) – See also: De Langen, van Meijeren, and Tavaszy (2012) [http://www.ejtir.tudelft.nl/issues/2012\\_03/pdf/2012\\_03\\_03.pdf](http://www.ejtir.tudelft.nl/issues/2012_03/pdf/2012_03_03.pdf)

<sup>88</sup> Long term average GDP growth rates in the EU of 1.4%

<sup>89</sup> OECD 2012, IHS Fairplay 2010, ITF 2011

will also dictate that some existing capacity becomes obsolete. With demand at 149 million TEU in 2030 and capacity also reaching 145-155 million TEU, it can be demonstrated that the supply/demand utilisation rate will reach the congestion threshold of 80% before 2030, and by 2030 the utilisation rate will exceed 95% in some regions.

#### Uncertainty in forecasting vs. market trends

Those projections must be taken with caution because of the multiple underlying assumptions (see Annex VII for the detailed modelling assumptions). New developments related, for example, to the introduction of new or raising trade barriers would have a direct negative impact on sea-borne transport and ports' activity in the EU. Conversely, further world trade liberalisation would entail much higher figures on demand for port services. The baseline scenario assumes that the current state of affairs will prevail: it does not consider sensitive analysis about possible trade agreements

Nevertheless, it can reasonably be concluded, in consistency with other studies and common experts' opinion, notably the "Logistic Performance Index" (LPI) elaborated by the World Bank<sup>90</sup>, that the trends featuring the main problem (see section 3.1) will be aggravated:

Firstly, there is a threat of port congestion in a number of areas, in particular the North Sea and Baltic Sea regions in the horizon 2020-2030. The congestion in their hinterland will cause longer delays at the access links to a number of major ports. Those delays will paradoxically increase the marginal transport costs of reaching the performing port regions. They will have a knock-on effect on higher fuel costs and road transport externalities while increasing the transport cost for and to peripheral countries<sup>91</sup>.

Secondly, the current geographical polarisation of the EU trade flows to a limited number of major ports will be accentuated, in spite of their hinterlands already being largely saturated.

Thirdly, the congestion in the ports reaching their limit in several geographical areas and the low performance in others will undermine the shift of road freight transport to maritime links which need uncongested and performing ports at both ends. This will put at risk the broader goal of the Transport White Paper on shifting 30% of long distance road freight transport to other modes such as rail or waterborne transport by 2030.

Fourthly, achieving the goals of the proposed EU legislation<sup>92</sup> on LNG (deployment of alternative fuels infrastructure, adopted in 2013) will put additional investment pressure<sup>93</sup> in the TEN-T Core network ports. Moreover, this framework could be a missed opportunity for the economic development of certain areas. Shortcomings on ports performance have effects on prices and supply of goods,<sup>94</sup> particularly when the port in question is the source of a significant share of global supply. As such, this could affect the competitiveness of European industries.

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<sup>90</sup> See World Bank "Connecting to Compete 2012 – Trade Logistics in the Global Economy

<sup>91</sup> See, in this regard, <http://www.oecd.org/env/transportandenvironment/41612575.pdf>

OECD (2008) Policy Instruments to limit negative environmental impacts from increased international transport.

<sup>92</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0018:FIN:EN:PDF>

<sup>93</sup> The Commission is proposing that LNG refuelling stations be installed in all maritime ports of the TEN-T core network by 2020. The total estimated cost for the proposed development of LNG refuelling stations for waterborne transport the EU will be approximately €2.1 billion

<sup>94</sup> Cf Bichou (2012) Linking theory with practice in port performance and benchmarking, International Journal of Ocean Systems Management 2012

### **3.6. Does the EU have the right to act?**

#### **3.6.1. Legal basis**

The right to act for the EU in the field of transport is set out in the Treaty on the functioning of the European Union (TFEU). According to Article 4 TFEU, the EU has shared competence with the Member States in the area of transport (Title VI TFEU). Article 58 TFEU stipulates that the freedom to provide services in the field of transport shall be governed by the provisions of the Title relating to transport. In this respect, article 100 TFEU states that the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may lay down appropriate provisions for sea transport<sup>95</sup>.

As far as public service obligations (PSOs) are concerned, Article 14 and Protocol 26 of the Treaty confirm the place occupied by services of general economic interest in the shared values of the Union. Article 106(2) of the Treaty lays down that undertakings entrusted with the operation of services of general economic interest are subject to the rules contained in the Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. In this respect, the initiative presented will not go further than allowed by the Treaty and will not impinge upon Member States' right to define PSOs.

At present, the Treaty, case law of the Court of Justice and secondary multi-sectorial rules create an EU legal framework applicable to ports, even if there is no EU transport specific legislation regarding ports. Under these circumstances it is reasonable to presume that sector specific measures adequately implementing the Treaty principles in the sector and providing a more comprehensive and legally certain framework are of genuine common interest.

#### **3.6.2. Subsidiarity**

Article 5 TFEU states that, every Union action should respect the principles of subsidiarity:

##### Necessity test

The legitimate rights of Member States to take actions which reflect their local, regional or national specificities, must not unduly restrict the proper functioning of the internal transport market. In the port sector, a level playing field for the provision of port services is necessary taking account that (2010 statistics) only 10% of the seaborne trade in the EU is national (trade within a member state), compared to 26% and 63% for respectively intra-EU trade (trade between member states) and extra-EU trade (trade with third countries). Moreover, the main TEN-T ports play a role that goes largely beyond national borders: 61% of the freight (tonnes) handled in EU ports has its origin or destination in another Member State<sup>96</sup>.

It is therefore necessary to provide rules at Union level in order to ensure the functioning of the internal transport market, an efficient and sustainable use of the TEN-T and its financial instruments (CEF, Cohesion Fund). The past has proven that action at national or lower level - even when the Commission has provided guidance in the form of recommendations (cf. 2007 EU Ports Policy Communication) - has not been sufficient to tackle the identified problem. Market access restrictions and market abuses continue to exist in several European ports. Similar conclusions can be drawn for the transparency in financial relations between public

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<sup>95</sup> Ports perform a land-sea interface functions. Some activities in ports are clearly linked to maritime transport, while some other (e.g. land-related logistic added value functions or activities of industrial firms installed in the port area) are clearly related to land transport needs.

<sup>96</sup> See Annex VII



authorities, port authorities and port service providers, and the autonomous setting of transparent and efficient port infrastructure charges. Also in relation to excessive administrative burden due to a lack of coordination within ports, not all Member States have managed to tackle this issue.

#### EU added value test

With regard to the European added value test, it is clear that the proposed action can be better achieved at Union level than at national level. The port sector is heavily exposed to international competitive pressure. Therefore, Member States have always been reluctant to induce structural changes in the functioning of their ports' system, as to avoid undesirable reactions of the maritime industry prompt to move assets at short notice. By acting at the EU level, this risk can be mitigated. Moreover, the EU has the possibility to act for achieving a true internal market for transport and an efficient TEN-T, implementing a level-playing field for ports and port services which cannot be better achieved at national level. Implementing adequately the Single Market rules in the sector would ensure fair allocation of funding resources and an open business environment promoting a dynamic of modernisation and performance based healthy competition between ports and between ports service providers.

Wide-ranging academic studies confirm that since the 1990s EU economic integration has involved a growing inter-dependence of European regions from sea-ports in distant hinterlands (see, e.g. Notteboom, 2012). The multiplication of pan-EU corridors brings about a change in the relationship between ports and their local hinterland. The inland penetration strategy is part of maritime gateways' objective of increasing their cargo base. On the other hand, interior regions are recognizing that it is in their interest to establish efficient links to as many gateways as possible<sup>97</sup>. This strategy not only prevents these regions from becoming captive to one specific gateway, it also improves the location qualities of these interior economic centres. Hence, the linking up to more gateways implies more routing options and flexibility for shippers and logistics service providers who want to set up business in the region.

#### Other considerations on subsidiarity

Finally, a parallel can be drawn with other transport modes. The port sector is the only transport sector for which there is almost no EU legislation on issues such as the access to the market, financial transparency, infrastructure charging and coordination issues. For example, in the case of aviation and the railway sector such a European framework does already exist, and the need for EU action was recognised as being in line with the subsidiarity principle. Therefore, although the specific nature of the maritime sector and its long-lasting history and culture is recognised, because of effects of scale and the international dimension of the sector, the proposed initiative is in line with the subsidiarity principle.

#### Measures in the different policy packages

The measures in the different policy packages have been chosen in line with the subsidiarity principle. Section 5.2 examines those subsidiarity aspects for each set of policy measures.

### **3.6.3. Proportionality**

The initiative is focused on TEN-T seaports only. This will ensure proportionality insofar as the TEN-T seaports deal with 90% of the traffic<sup>98</sup> and by definition are essential for the

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<sup>97</sup> For example, the Czech Republic is upgrading its trans-European travel corridors intensively (in particular, the corridor four connecting Germany with South-Eastern Europe).

<sup>98</sup> See TEN-T ports: [http://ec.europa.eu/transport/themes/infrastructure/ten-t-policy/transport-mode/ports\\_en.htm](http://ec.europa.eu/transport/themes/infrastructure/ten-t-policy/transport-mode/ports_en.htm)

international and intra-European trade exchanges, the functioning of the whole transport network and therefore for the European internal market and the cohesion within the EU. The scope has not been further limited to the core ports in order not to risk creating distortions of competition between core ports and non-core TEN-T ports. As explained in the problem definition, an efficient functioning of the network requires contribution from all TEN-T ports.

#### 4. OBJECTIVES

##### 4.1. General objective

**The general objective is to improve the performance of the TEN-T seaports in order to contribute to the goal of a more efficient, interconnected and sustainable functioning of the TEN-T.**

Ports must be efficient gateways and help develop short sea shipping as part of intermodal routes, hence contributing to sustainable transport, one of the key goals of the Transport White Paper and contribute to the EU 2020 strategy for a resource efficient growth to stimulate growth of trade and cargo.

##### 4.2. Specific objectives (SO)

**SO1. Modernise port services and operations in all TEN-T seaports:** by better optimising port services and operations, a number of TEN-T ports could handle or attract more cargo and passengers with the existing infrastructure.

**SO2. Optimise port governance frameworks as to enable a more attractive investment climate:** a greater financial transparency and autonomy of ports will create a level playing field, encourage more efficient charging, and eventually attract efficient investments.

##### 4.3. Operational objectives (OO)

*OOs linked to modernisation of port services and operations (SO1)*

**OO1. Clarify and facilitate access to the port services market:** to reduce access restrictions for the port services market while avoiding the current legal uncertainties stemming from horizontal rules from the Treaty and on public procurement

**OO2. Prevent market abuse by port service providers with exclusive or special rights:** to ensure that services which enjoy exclusive or special rights are provided in a cost-efficient manner while continuing to fulfil their role and possible their mission of public service, notably in the field of safety, security and environment

**OO3. To ensure the consultation of port users on the main decisions which affect the functioning of the port in all (100%) TEN-T ports by the end of the implementation date of the initiative:** to facilitate trade for shippers, logistic operators and cargo-owners, reducing the time and money required for using the port. The coordination effort should also benefit operators established in the port, facilitating synergies and avoiding duplication of efforts for serving the same customers.

*OOs linked to creation of framework conditions which attract investments in ports (SO2)*

**OO4. To ensure the transparency in the financial relations between public authorities, port authorities and port service providers in all (100%) TEN-T ports by the end of the implementation date of the initiative:** to achieve a financial transparency between public authority functions and commercial operations so that the ports and service providers do not hold unfair competitive advantages

**OO5. To ensure that all (100%) TEN-T port authorities are free to autonomously set their port infrastructure charges by the end of the implementation date of the initiative, with the possibility of environmental modulation of the charges:** to achieve a more efficient use of infrastructure and more economic rationality in the planning, investment, maintenance, and operation of port infrastructures, while enabling environmental price signals

The operational objectives defined above are specific and realistic. However, no concrete measurable and time-dependent targets can be set for the first two operational objectives in reason of their nature as catalysers for a more competitive maritime transport market. Moreover, its effectiveness heavily depends on the specific approach taken by the most directly concerned stakeholders. An example is the definition of public service obligations taking account of the particular circumstances of the port. Furthermore, the degree of market access will depend on the timing of new contracts that will become operational.

It is also not possible to quantify the potential for market abuse reduction for a certain time period, as the comparison with the current situation is difficult and because future action on market abuses will heavily depend on the effectiveness of the regulatory authorities.

More measurable targets such as an increase of short sea shipping have not been retained, as these are considered to be impacts of the measures (see 6.1.5) and not as true operational objectives. The progress towards the operational objectives will be monitored according to the monitoring indicators (chapter 9).

#### 4.4. Linking the problem and objectives

**Table 13: links between the problem and objectives**

|  |   |
|--|---|
| General problem: Structural performance gaps in some TEN-T seaports; need to modernise ports to new transport and logistics requirements at a moment of scarce public funding. | General objective: Improve the performance of the TEN-T seaports in order to contribute to the goal of a more efficient, interconnected and sustainable functioning of the TEN-T                      |
| <b>Driver 1:</b><br><b>Sub-optimal port services and operations in some TEN-T seaports</b>   | <b>Specific objective 1:</b><br><b>Ensure optimal port services and operation in all TEN-T seaports</b>   |
| <u>Root cause 1:</u><br>Weak competitive pressure in the port services market resulting from market access restrictions  | <u>Operational objective 1:</u><br>Clarify and facilitate access to the port services market  |
| <u>Root cause 2:</u><br>Market abuses by port service providers with exclusive or special rights   | <u>Operational objective 2:</u><br>Prevent market abuse by port service providers with exclusive or special rights  |
| <u>Root cause 3:</u><br>Users face excessive administrative burden due to a lack of coordination within ports  | <u>Operational objective 3:</u><br>To ensure the consultation of port users on the main decisions which affect the functioning of the port  |
| <b>Driver 2:</b><br><b>Port governance frameworks not attractive enough for investments in all TEN-T seaports</b>  | <b>Specific objective 2:</b><br><b>Optimise port governance frameworks as to enable a more attractive investment climate</b>  |
| <u>Root cause 4:</u><br>Unclear financial relations between public authorities, ports and providers of port services   | <u>Operational objective 4:</u><br>To ensure the transparency in the financial relations between public authorities, port authorities and port service providers                                      |
| <u>Root cause 5:</u><br>Weak autonomy of port authorities to define infrastructure charges and non-transparent link with costs   | <u>Operational objective 5:</u><br>To ensure that TEN-T port authorities have a degree of autonomy to set port infrastructure charges with the possibility of environmental modulation of the charges |

## 5. POLICY OPTIONS

The stakeholder consultation, the stakeholder meetings, independent research and own analysis allowed the Commission to identify a set of individual measures having the potential to address the root causes of the problem identified in section 3. The following process was applied for establishing the policy packages that will be analysed in later parts of the present report:

- Identify the policy measures which can be discarded on the basis of a first preliminary assessment
- Identify a list of retained policy measures addressing the problems and respective root causes in full
- Combine retained measures into policy packages constituting viable and coherent policy alternatives for achieving the objectives.

### 5.1. Discarded policy measures

The Commission services have identified several policy measures. Some measures were favoured by some stakeholders, yet contested by other stakeholders and in some cases contradicted by independent research. Based on a first preliminary assessment, the Commission services have therefore decided to discard some of these measures:

#### Reform of the port labour market

In the context of the public consultation, the main trade unions of port workers have made clear their frontal opposition to any EU action in this area as it could, according to them, create social dumping, put at risk jobs and salaries and impact negatively on working conditions. Important social tensions exist and in the current climate the Commission considers that such tensions can best be addressed through the social dialogue. The Commission has already initiated the necessary steps and a formal European Social Dialogue Committee (SDC) will start in the first months of 2013. Issues related to exclusive port/dock labour regimes and practices in some Member States should be discussed, as appropriate, in the context of this SDC. In full respect of the TFEU rules<sup>99</sup>, the working method, priority of the discussions and possible agreements of the SDC will be discussed with due regard for the autonomy of the social partners.

The Commission will actively support the social partners, notably through the presentation of the fact finding study on the EU Port Labour Regimes<sup>100</sup>, which includes a detailed overview of the situation in ports in each of the 22 EU maritime Member States. Progress in this field will be monitored in the context of the implementation report referred to in Section 9 of this report.

In these circumstances, legislating in this area before leaving the possibility to the Social Dialogue to address it would be inopportune (see also Annex X).

#### Generalisation of the self-handling

“Self-handling” entails companies employing personnel of their own choice to handle their cargo. The public consultation shows that self-handling is much less an issue for port users. It may remain an attractive option only for very specific segments like cars and other Ro-Ro traffic and special or heavy-lift cargo. In the context of the consultation, the trade unions have

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<sup>99</sup> Article 155 (2) TFEU provides two ways to implement EU social dialogue agreements: either by implementation via Council Directive, or ‘in accordance with the procedures and practices specific to management and labour and the Member States’, the so-called ‘voluntary route’.

<sup>100</sup> Study of Prof Van Hooydonk, University of Ghent, College of Europe, for DG MOVE (2013) – See Annex VII

vigorously reacted against the Commission’s alleged intention of permitting self-handling in all ports. In practice “self-handling” is allowed in ports in several Member States<sup>101</sup>. In other Member States, it is not allowed (in Belgium, France, Spain or Portugal among others). In quantitative terms, ship’ “self-handling” practices are of marginal importance for (most) TEN-T ports<sup>102</sup>. Excluding handling of specialised cargoes (heavy lift) and of vehicles, self-handling practices would affect less than 0.01% of the operations. Obliging Member States to allow self-handling has therefore been discarded as it could be a disproportionate measure given the potentially strong opposition from stakeholders.

Prohibition of exclusive rights to operate port services, or of in-house services

Protocol n°26 attached to the TFEU on Services of General Interest emphasises the wide discretionary power left to Member States to define, organise and manage Services of General Economic Interest. Moreover according to Article 345 TFEU, the Treaties shall in no way prejudice the rules in Member States governing the system of property ownership. Measures impinging on these rights would be illegal and disproportionate.

**5.2. List of considered policy measures**

The stakeholders' consultation, the targeted hearings, independent research and own analysis have allowed the Commission services to identify a broad set of individual measures having the potential to address the root causes of the problem and objectives explained above. Those measures can be seen as "market enablers", i.e. basic requirements enabling healthy competition in an open economic model. All the proposed measures exist and apply since long time in other transport sectors covered by EU legislation – and are a normal practice in many other economic sectors.

Intervention logic

The intervention logic is that, by providing a level playing field built on those measures, market dynamics would progressively address the main problem and its root causes. Moreover, the intervention logic assumes the parallel implementation of other EU instruments like the TEN-T and CEF, the support of the Structural Funds for the development of ports, the concessions, directive, the effective enforcement of competition law or the progress achieved on port issues through the Social Dialogue process (cf. base line scenario presented in section 3.5).

The tables below provides a mapping between the retained policy measures and the different root causes identified earlier in this impact assessment.

**5.2.1. Measures to ensure optimal port services and operation in all TEN-T seaports**

**Table 14: Root cause 1: Weak competitive pressure in the port services market resulting from market access restrictions**

| Measures   | Description  |
|--|--|
| <i>1. Freedom to provide services (no restrictions on market access) for "normal services", i-e services other than those linked to Public</i> | The freedom to provide services applies and relates to the free entry of any service provider established in the EU. Operators would be authorised on the basis of transparent and non-discriminatory criteria. These criteria would be determined, published and made accessible to all by the Member States. |

<sup>101</sup> For example, in 2009 Italian judges confirmed the right of self-handling on quays for ship operators; in ports in the UK, NL, DE, DK, PL or GR, self-handling can take place under the conditions established by Port Authorities

<sup>102</sup> Less than 3% of (small) TEN-T ports would be concerned; self-handling is an option only for general cargoes (a declining category) in ports that are not sufficiently equipped. Modern ships are not fitted with gear/equipment for self-handling. An exception concerns car-carriers, where cargo-owners (car industry) express preoccupation about the quality of service provided by dock workers in some ports.

|   |  |
|---|--|
| <i>Services or space constraints</i>  |  |
| <i>2. Obligation of public tendering for new contracts in the case of public service obligations or space constraints (except for small contracts)<sup>103</sup></i>  | <p>Member States and the port authorities would be allowed to impose restrictions to the freedom to provide services on the grounds of objective reason of space constraint*** or public service obligations**. But in such cases, the Member State or the port authority would need to enter into a contractual arrangement with a port service provider to be selected by means of a transparent public tendering procedure<sup>104</sup> (except for small contracts)*.</p> <p>* The maximum duration of the contracts would have to be linked to the expected economic lifetime of investments.</p> <p>** Public service obligations would be accepted only for reasons related to safety, security, accessibility and/or availability.</p> <p>*** The lack of space refers to the fact that ports are confined to a limited geographical area and the fact that for certain services it is physically impossible or otherwise disadvantageous to users to entrust more than a limited number of operators. In such a case, the market must be subject to access regulation.</p> |
| <i>3. Explain in a Commission's Communication how existing Treaty rules apply to port services</i>  | In contrast with other measures relying on binding provisions for Member States, this measure would entail a Commission's Communication to explain how the principles of non-discrimination and free establishment result in an obligation of transparency and equal treatment (Court of Justice Teleaustria ruling) and how they can be applied in practice to arrangements/contracts awarded to port service operators. Moreover, the Communication would also explain how horizontal instruments such as the concession directive, the transparency directive, or the future approach to state aid could be better enforced in the port sector.   |
| <i>4. In addition to measure 2, impose the obligation to have at least 2 operators for services linked to space constraints to be selected after a public tender for new contracts (except for small contracts)</i> | In addition to measure 2, in the case of port services subject to space constraints the port authority or the Member State needs to ensure that there are at least 2 competing and independent operators. A public tendering obligation is imposed.  |
| <i>5. Obligation of public tendering in case of substantial changes of existing contracts linked to public service obligations or space constraints</i>   | This measure is the same as measure 2 but in addition the obligation of public tendering will also apply in case of substantial modification of existing contracts/arrangements. A substantial modification would entail a modification of a significant value of the contract/arrangement and/or a change of the nature of activity.  |

The proposed measures are in line with the subsidiarity principle, as the developments over the past years have shown that member states alone are unable to sufficiently realise the objectives of the proposed measures, and as the proposed solution can be better achieved at Union level. This because of the European dimension of the related problems (e.g. the efficient, interconnected and sustainable TEN-T), the high exposure to international competitive pressure linked to market access and market abuse, and the growing inter-dependence of European regions from sea-ports in distant hinterlands.

**Table 15: Root cause 2: Market abuses by operators with exclusive/special rights**

| Measures | Description |
|----------|-------------|
|----------|-------------|

<sup>103</sup> Small contracts are those contracts below a threshold of 5 million €(over the whole contract duration). This threshold is in line with EU and international agreements in the field of public procurement and concessions. Given the international nature of the shipping and port business this is considered the appropriate approach.

|  |  |
|--|--|
| 6. <i>Confinement for internal operators of port services</i>  | In the event that a port or public authority is performing (commercial) port services in-house [as a derogation to the freedom to provide service and the application of a public tendering procedure (cf measures 1,2,3 and 5)], the operation of the service shall be confined to the dedicated port, or group of ports, serviced by the port managing body or the authority, and consequently the internal provider cannot offer the service outside the port or group of ports. This will avoid cases where operators can benefit from potential cross-subsidies or enjoy unfair competitive advantages.                       |
| 7. <i>Principles of transparency, non-discrimination and proportionality for the price of port services provided by operators in monopolistic position</i>   | Derogating from the general rule of freedom to provide service (cf measure 1) could leave the service provided by internal operators or operators with exclusive/special rights with insufficient or non existing competitive pressure. To avoid price abuses, this measure would impose basic principles on pricing, namely proportionality (cost based), transparency and non-discrimination (with possibilities to apply commercial rebates if accessible to all users). The Member State will need to designate a regulatory authority (e.g. an existing competition authority) to deal with complaints by port service users. |
| 8. <i>Principles of transparency, non-discrimination and proportionality for the price of port services provided by operators in monopolistic position for which no public tender is organised</i> | The measure will be the same as measure 7 except that it would apply only to services for which no public tender applies and therefore for which the market can not be contested at the end of the contract. If the market can not be contested at the end of the contract by means of a public tender, the competitive pressure is indeed weaker. The scope is therefore more limited than measure 7 and focuses on cases where the likelihood of absence of competitive pressure is higher.  |

The measures linked to root cause 2 are in line with the subsidiarity principles for similar reasons as explained for the measures linked to root cause 1 (see above).

**Table 16: Root cause 3: Users face excessive administrative burden due to a lack of coordination within ports**

| Measures                            | Description   |
|-------------------------------------|---|
| 9. <i>Central Port Coordination</i> | In a free market situation, there is a possible proliferation of port service providers. This will lead to potential conflicts between the different service providers. Therefore, the MS will be obliged to ensure a central port coordination in every port to ensure safe and efficient operations.  |
| 10. <i>Port users' committee</i>    | <p>A port users' committee would be set up in each port. The committee would facilitate the dialogue between all port actors (users, service providers, authorities, workers) in order to ensure a seamless logistical flow of freight (and passengers) in the port and to and from the hinterland. It would be organised by, but independent from, the port authority. Its precise competences and composition of the committee would be left over to the discretion of the MS or port authority and could include the following:</p> <ul style="list-style-type: none"> <li>• regular consultative role on the structure and level of port dues</li> <li>• ad-hoc consultative role (at the request of the regulatory authority of measures 7 and 8) on possible (price) abuses of port services</li> <li>• consultative role in the set-up of an administrative simplification plan: the plan could include performance targets (e.g. maximum duration of administrative procedure) and issue recommendations on how to organise and better coordinate administrative procedures for port users. This plan should be based on existing EU legal requirements and recommendations.</li> </ul> |

The measures related to root cause 3 are in line with the subsidiarity principle as this root cause of low performance of some ports undermines the development of short sea shipping and “motorways of the sea” (connecting ports in different Member States), the functioning of the TEN and therefore the internal market. Therefore, European action is justified. The justification for EU action in this field also follows from similar actions in the field of aviation,

where also for airports; the installation of users' committee has been proposed<sup>105</sup> by the European Commission.

Moreover, measure 10 on a port user's committee does not go further than necessary and is therefore proportionate. By giving users a consultative role in the main decisions which affect the functioning of the port, a common practice in some of the most modern and performing ports (e.g. in the North Sea range) will be extended to other ports as well.

The aim is to stimulate best practices for better satisfying customer' needs. The European action does not intend to interfere with internal operational port coordination. The rationale is to ensure that port authorities and administrations listen to the users. Port authorities will therefore be left free to define the content, objectives and work methods of the user consultation / coordination. As measure 9 (central port coordination) is more prescriptive than measure 10 (port users' committee), measure 9 is less proportionate than measure 10.

### 5.2.2. Measures to optimise port governance frameworks as to enable a more attractive investment climate

**Table 17: Root cause 4: Unclear financial relations between public authorities, port authorities and providers of port services**

| Measures  | Description   |
|---|---|
| <i>11. Functional/legal separation</i>  | Ports would have to define and separate public functions from commercial functions linked to the provision of port services and attribute them to separate legal entities. Obviously, this entails also a full separation of accounts as presented in measure 12, as each of the presented activities would be in a different legal entity.   |
| <i>12. Separation of accounts</i>   | <p>The measure would impose two requirements:</p> <ol style="list-style-type: none"> <li>1. Port authorities which receive public funds (irrespective of their ownership structure -cf Art 345 TFEU) would keep an accounting system that allows the identification of any financial flow (grants, loans guarantees, equity share etc.) from public authorities to the port authority.</li> <li>2. The accounting system would have to differentiate between the different types of activities carried out by the port authorities (1) port (public) functions and (2) (commercial) service activities and to differentiate between the different (commercial) services provided in order to reveal possible cross-subsidies*.</li> </ol> <p>The accounts will have to be kept at the disposal of the national authorities and the Commission in order to help them to ensure transparency as well as to prevent possible state aids and distortion of competition between port authorities and between port service providers.</p> <p>*Cross-subsidies between various services provided by a port authority would not be unauthorised but making them identifiable would make it easier to monitor whether they lead to market distortions.</p> |
| <i>13. Financial transparency between public authorities and port authorities</i> | This measure would impose only the first requirement of measure 12, namely that port authorities which receive public funds keep an accounting system that allows to identify any financial flow from public authorities to the port authority (similarly to Directive 2006/111/EC on the transparency of the financial relationship between public authorities and public undertakings). The accounts will have to be kept at the disposal of the national authorities and the Commission.   |

The measures linked to root cause 4 are in line with the subsidiarity principle as transparent financial relations between public authorities and port authorities and providers of port services

<sup>105</sup> See COM(2011) 824 final



are necessary to ensure a level playing at European level. Unless in all Member States the same rules on transparent financial relations apply, it will not be possible to trace possible distortive state aids and cross-subsidisation of port services.

Practice has shown that in the current situation, without a European framework, procedures to investigate the legality of state aid in line with the TFEU rules, are complex and involve long litigation and costs. The situation is particularly difficult for SMEs which, often, depend on the port authority and/or incumbent operators with a dominant position in the port for carrying out their activity.

Therefore, the compliance with European state aid rules in order to ensure a level playing field can only be guaranteed by a European framework on financial transparency. As measure 11 (legal/functional separation) is more prescriptive than measure 12 and 13, measure 11 is less proportionate.

**Table 18: Root cause 5: Weak autonomy of port authorities to define infrastructure charges and non-transparent link with costs**

| <b>Measures</b>   | <b>Description</b>   |
|---|--|
| <i>14. Autonomy of the individual ports to set and collect dues</i>                       | Each port managing body would be free to set the structure and level of the port dues (related to the use of the port infrastructure) as it feels appropriate, according to its own commercial and investment strategy. It should be free to collect the revenues arising from port dues.                                |
| <i>15. Transparent, cost-based and differentiated port dues</i>                           | Binding rules would be introduced to ensure that infrastructure charges respect in a transparent way the principle of proportionality to cost (long term marginal cost-based). Environmental differentiation of charges will be introduced according to objective criteria left to each Member State.                    |
| <i>16. Encouraging discounts on port dues based on environmental performance criteria</i> | Ports would be allowed to offer price incentives to cleaner transport (cleaner ships/propulsion/fuels, certain short sea shipping). The Commission would also establish non binding guidelines on how to apply such a variation (e.g. classification to be used).  |
| <i>17. Transparency of port due calculation</i>   | The prices and calculation methods for port infrastructure access charges related to the public access facility to a port would be made accessible to the port users and the designated authorities. The method would have to indicate the overall cost components and how the total port dues contribute to recover it. |

The measures linked to root cause 5 are in line with the subsidiarity principle as the lack of autonomy of port authorities to define their port infrastructure charges can result in indirect cross-subsidisation of port investments, and can thus result in possible distortions of trade flows at European level. In order to ensure a level playing field at European level, action at Union level is therefore justified.

### **5.3. Policy Packages**

To address the problem and its root causes in full, four policy packages of measures have been constructed. Each policy package is composed of a series of measures addressing the two specific objectives and all of the five operational objectives.

The logic used to construct the policy packages is to progressively introduce more competition in the port service market and more autonomy for port authorities, which would also require more transparency in flows and uses of public funding within port entities, and in port infrastructure charging to ensure a level playing field. As a result, more coordination would be needed as this would entail a multiplication of providers and port stakeholders. The more open the port market is, the more likely port charges would reflect marginal costs if set in an autonomous way by the ports.

For the sake of clarity in the impact assessment, only a small number of policy packages has been retained. Other combination of measures have been eliminated either because they would have been minor variations of the retained policy packages without a sufficient significant difference of impact to draw policy conclusions (e.g. confinement of in-house operators in policy package PP1), or because they would have been contradictory or inconsistent (e.g. use of soft law to apply public tendering in combination with obligation to select at least two operators). Policy package PP2a has been constructed on the basis of policy package PP2 after more detailed discussions with stakeholders which revealed the need for additional measures and of this additional combination of measures to be considered.

### 5.3.1. Overview of measures proposed in the policy packages

Table 19: Overview of measures and policy packages

|  | PP1 | PP2 | PP2a | PP3 |
|--|-----|-----|------|-----|
| <b>SO1: Ensure optimal port services and operation in all TEN-T seaports</b>   |     |     |      |     |
| <i>OO1: Clarify and facilitate access to the port services market</i>  |     |     |      |     |
| 1. Freedom to provide services: no restrictions on market access for "normal services" i-e services other than those linked to public service obligations or space constraints   |     | X   | X    | X   |
| 2. Obligation of public tendering for new contracts, except for small contracts, for services with public service obligations or linked to space constraints   |     | X   | X    | X   |
| 3. Explain in a Communication how existing Treaty rules apply to port services   | X   |     |      |     |
| 4. In addition to measure 2, impose the obligation to have at least 2 operators selected after public tendering for services linked to space constraints (except for small contracts)  |     |     |      | X   |
| 5. Obligation of public tendering for substantial changes to existing contracts linked to public service obligations or space constraints  |     |     | X    | X   |
| <i>OO2: Prevent market abuses by service providers with exclusive/special rights</i>   |     |     |      |     |
| 6. Confinement of internal (public) providers of port services   |     | X   | X    | X   |
| 7. Principles of transparency, non-discrimination and proportionality for the price of port services if provided by operators in monopolistic position   | X   | X   |      |     |
| 8. Principles of transparency, non-discrimination and proportionality for the price of port services if provided by operators in monopolistic position and for which no public tender applies  |     |     | X    | X   |
| <i>OO3: To ensure the consultation of port users on the main decisions which affect the functioning of the port in all (100%) TEN-T ports by the end of the implementation date of the initiative</i>  |     |     |      |     |
| 9. Central Port Coordination   |     |     |      | X   |
| 10. Port user committee  | X   | X   | X    |     |
| <b>SO2: Optimise port governance frameworks as to enable a more attractive investment climate</b>  |     |     |      |     |
| <i>OO4: To ensure the transparency in the financial relations between public authorities, port authorities and port service providers in all (100%) TEN-T ports by the end of the implementation date of the initiative</i>                          |     |     |      |     |
| 11. Functional/legal separation  |     |     |      | X   |
| 12. Separation of accounts   |     | X   | X    |     |
| 13. Financial transparency between public and port authorities   | X   |     |      |     |
| <i>OO5: To ensure that all (100%) TEN-T port authorities are free to autonomously set their port infrastructure charges by the end of the implementation date of the initiative, with the possibility of environmental modulation of the charges</i> |     |     |      |     |
| 14. Freedom for individual ports to set dues   |     |     | X    | X   |
| 15. Transparent, cost-based and differentiated dues  |     | X   |      |     |
| 16. Enabling variations based on environmental performance   |     |     | X    |     |
| 17. Transparency of port due calculation   | X   |     | X    |     |

### 5.3.2. Policy Package 1: “Horizontal Instruments and Transparency”

Policy Package 1 (PP1) combines the use of horizontal instruments, a soft measure on market access and legally binding provisions on the financial transparency, the intra-port coordination

and port infrastructure access charges. PP1 explains through a non binding Commission's Communication (measure 3), the existing TFEU rules on non-discrimination and the freedom of establishment and the enforcement of horizontal instruments such as the concession directive, the transparency directive or the future approach to state aid in the sector<sup>106</sup>.

The Communication would recall that case law confirms that transparency and an equal treatment of potential bidders must be ensured: in the case a public authority awards a contract to a port services provider, there must be adequate publicity. PP1 would also impose some regulatory measures. Since exclusive rights may remain frequent, the price of port services, in those cases where no competition has been introduced, would need to be controlled in a transparent way (measure 7) to prevent possible abuses. The transparency and good functioning would be guaranteed and coordinated by the port managing body. The port managing body would organise the consultation and representation of all stakeholders and service providers in the port users' committee (measure 10). This port users' committee would, amongst others, be consulted on matters relating to the simplification of the administrative procedures in ports. To ensure the financial transparency between public and port authorities, accounts revealing any public funds would have to be kept available to national and EU competition authorities (measure 13). The port dues would be transparent and publicly available to all port users (measure 17).

### **5.3.3. Policy Package 2: “Regulated competition”**

Policy Package 2 (PP2) introduces the freedom to provide services (measure 1), while leaving to Member States a discretionary margin in deciding whether to restrict this freedom for objective and transparent reasons related to the lack of space or reasons of public interest (safety, security, accessibility and/or environment). In the latter case, the public or port authority would have to enter into a contractual arrangement with a port service via a public tendering procedure (measure 2), except in duly justified cases (e.g. small contracts and urgencies). However the obligation of public tendering would apply only to future contracts. The separation of accounts (measure 12) would enable the competition authorities to track possible distortive state aids and cross-subsidies between port services. If the service is provided by an in-house operator or an operator with exclusive/special right in monopolistic position, a price regulatory oversight and confinement obligation would avoid abuses (measures 6 and 7). Improved intra-port coordination would take place thanks to a port user committee (measure 10). The charging for using the port infrastructure will be done transparently, according to the actual costs, and will vary according to the environmental performance of ships or fuels used (measure 15).

### **5.3.4. Policy Package 2a: “Reinforced regulated competition and port autonomy”**

Policy Package 2a (PP2a) consists of PP2 with the following differences :

- Market access would be made slightly easier: the obligation to have recourse to public tenders in case of space restrictions of public service obligations would apply not only to new contracts but also to the substantial changes to existing contracts (measure 5).
- The regulatory oversight of service providers in monopolistic position would be more limited in scope: it would only apply to the markets which can not be contested, i-e the markets for which no public tender is organised (measure 8).

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<sup>106</sup> Cf. Modernisation exercise of State Aid rules announced by the Commission in 2012.

- Greater autonomy would be given to ports: on infrastructure charging, instead of imposing common charging principles, each port would be given the right to set itself the structure and level of port dues (measures 14), provided that the charging policy remains transparent (measure 17). The initiative would also encourage a differentiation according to the environmental performance of ships or fuels (measure 16).

### **5.3.5. Policy Package 3: “Full competition and port autonomy”**

Policy package 3 (PP3) builds on PP2a by obliging additionally at least two competing and independent operators for every port service where the number of operators is limited as a result of space constraint (measure 4). There would be a functional/legal separation (measure 11). This separation would result in a multiplication of port actors: to ensure that the port keeps functioning, strengthening the central coordination role of the port authorities would be necessary (measure 9). As in PP2a each port authority would be made free to determine the structure and level of infrastructure charges (measure 14) according its own commercial practices. Transparency of the charges is not considered necessary, as the competitive environment will induce enough pressure to keep the level of the charge at an appropriate level, in line with the autonomy of the port authority.

### **5.3.6. Stakeholders view on policy packages**

A vast majority of stakeholders agree on the necessity of a level playing field ensuring the respect of all players of obligations concerning the transparency of accounts, a fair and transparent market access mechanism and supervision, in cases of services provided under monopolistic or oligopolistic regimes, by an independent authority (essentially, measures considered in packages PP2 and PP2a).

Stakeholders remain sceptical about the effectiveness of a new Communication recalling general principles and exhorting actors – port authorities, incumbent operators – to respect those principles on a voluntary basis (PP1).

The approach to port infrastructure charging schemes is controversial, with a significant number of stakeholders being reluctant to a uniform system imposing cost orientation. Nevertheless, users of port services strongly agree on the necessity of having charging systems that are transparent and based on economic rationality principles.

There are mixed views about the measure requiring involvement of users: while the principle of consultation is widely accepted, there are concerns by port authorities and operators about the possible nature and attributions of "users committees in ports".

Finally, there is significant opposition to measures requiring full unbundling of activities of port authorities, imposing a minimum number of operators in the port or a central coordination role for ports.

## **6. ANALYSIS OF IMPACTS**

Each policy package (PP) has been analysed in terms of its economic, environmental and social impact against the baseline scenario. Where possible, quantitative estimates are given, in other cases however, because of the non-availability of statistics, this was not possible. In these cases, a qualitative assessment is provided and where relevant strengthened by the opinion of stakeholders. Because of the nature and diversity of the EU port system, the calculations and assumptions needed to be aggregated and sometimes generalised. Thus, while the quantified estimates do indicate a trend-line, caution is needed in the interpretation of the exact figures.

## 6.1. Economic impacts

### 6.1.1. Direct and indirect transport costs

The quantification of impacts of the different policy packages in terms of savings in total port related costs is presented in Table 20. The main assumption underlying the calculation is that open markets will reduce the price of port services. In cases of ports services provided under exclusive rights (monopolistic situation arising when free market access is restricted), a degree of market contestability puts pressure on the pricing of the incumbent(s) to keep their prices at competitive levels. Information obtained from the user surveys has been analysed in order to derive assumptions about the scope for cost decreases. The calculation is explained in detail in Annex VII. It assumes a range of price decrease for each individual service ranging from 2% to 20% depending on the policy packages and the type of service as a result of the introduction of competitive pressure.

As regards the impact of the policy packages on port charging levels, i.e. pricing of port infrastructural services established by port authorities by means of port dues, it is assumed that PP2a will slightly reduce port dues as a result of more autonomy and more efficient management. Academic research suggests<sup>107</sup> that in cases where ports have a degree of autonomy in the establishment of charges, e.g. in the UK – where private ports by their own means fund their own port general infrastructures or in other ports in the Le Havre – Hamburg range, the level of port dues has actually decreased over the years. By contrast in PP2, which establishes a direct link between port dues and costs, it is assumed that the level of charge increases (however this increase is compensated by the decrease of the cost of port services). The impact on the total port cost was then calculated by extrapolating port tariffs data from Rotterdam<sup>108</sup>.

The resulting changes of total port costs and the annual savings range from €318.15 million per year in PP1 to €1,245.21 million per year in PP3. Caution is warranted when interpreting the results which depend on the price assumptions. The latter have been applied in an uniform way across all ports while the impacts on prices of port services are likely to vary according to regions and the individual ports.

**Table 20: Impacts of the policy packages on total port related costs (PWC, 2013)**

|      | <b>Change (%) in Total Port Related Costs</b> | <b>Annual Savings (€million)</b> |
|------|---|----------------------------------|
| PP1  | -2.0%   | 318.15                           |
| PP2  | -3.0%   | 481.47                           |
| PP2a | -6.8%   | 1,071.37                         |
| PP3  | -7.9%   | 1,245.21                         |

A further advantage of low entry barriers and contestability of the port services market would arise from an improved quality of service such as velocity, reliability and predictability of delays. The latter although not quantified in this impact assessment are usually considered by logistics companies as critical factors which may be ranked as important as the price.

<sup>107</sup> Cf. World Bank studies on port development. See also Clark, David Dollar, Alejandro Micco (2004) "Port efficiency, maritime transport costs and bilateral trade", Haralambides et al.

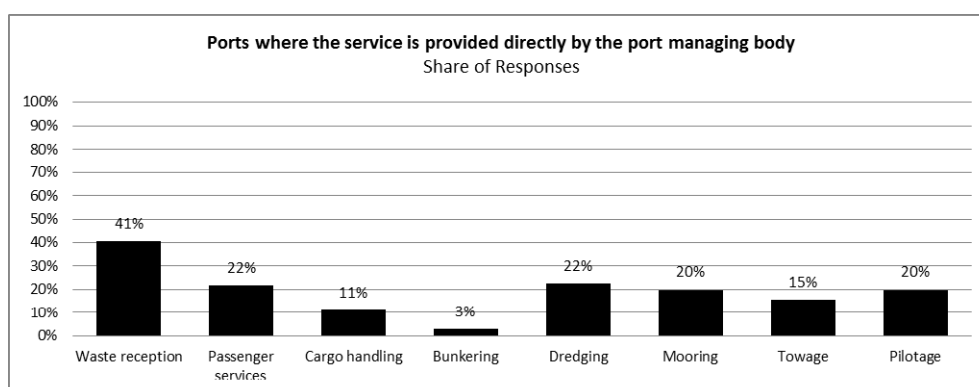
<sup>108</sup> In the PwC methodology, the Port of Rotterdam (PoR) is taken as a reference for the benchmarking exercise because of the good results obtained by the port in international benchmarking exercises over the years. Data on costs and costs structures of the PoR have been extensively examined by academic research. In quantitative terms, the PoR represents by itself 10% of the total EU port traffic

More generally an easier access to the market will allow new entrants to implement new technologies, systems and business models and to bring business dynamism to a market when there are exogenous changes in demand. In that regard, an increase in competitive pressure in the port should lead to a dynamic of modernisation of services and improvement of performance in order to meet market needs.

The following considerations are relevant for examining the impacts of the different PPs:

- In PP1, port costs may decrease as a result of the regulatory supervision of prices which will mainly impact services usually organised in monopoly, namely pilotage, towage, waste reception to the benefit of port users. The consultation of the port user committee will introduce more customer orientations in port service providers, although it will have no impact on those TEN-T ports which have already established such committee. By means of a communication, PP1 will clarify existing rules as regards the market access, including the scope of the Concessions Directive, which will be welcomed by stakeholders. However in view of past experience (cf. 2007 Communication on Ports' Policy), such a soft approach is unlikely to effectively lift current market access restrictions in the short term.
- In both PP2 and PP2a, the direct and indirect costs of port services will decrease. In contrast to PP1, the two PPs will ensure a fair market access in the port sector, requiring Member States to apply public tendering procedures where for objective reasons the market has to be reserved to one (or few) operators. PP2 and PP2a will also generate the positive impacts of PP1 linked to a better regulatory supervision of monopolist positions, although questions of disproportionate administrative cost may arise.
- PP3 will impose a stronger competitive pressure in the market by ensuring the presence of at least two operators. A similar approach was used in Directive 96/76/EC on groundhandling services in airports and in the Commission's proposal of 2001 and 2004 on ports. In theory, efficiency gains could be higher for services using contracts with a long term duration, typically cargo handling and passenger services. In practice, as seen in Chapter 3 (see also table 6), providers of cargo handling and passengers services are already exposed to competitive pressure in a significant number of TEN-T ports. As a result, the cost impact of PP3 is likely to be higher than in PP2 and PP2a.

**Table 21: port services provided by in-house (public) operators (PWC, 2013)**



- PP2, PP2a and PP3 apply confinement rules, in other words prohibit in-house operators with exclusive rights to compete on other markets. 79% of TEN-T ports provide at least one of the 8 ports services and are therefore potentially impacted. Table 21 gives an indication of the port services provided in-house (applicable mainly to waste reception,

dredging and to a smaller extent passenger services, mooring and pilotage). However, it seems that only a small share of these operators provide services outside their ports or cluster of ports. It is concluded that confinement measures (which avoid undue competitive advantages stemming from possible state aids to ports and apply the reciprocity principle), will have overall a limited impact.

### 6.1.2. Investments

To appreciate whether and how the policy packages contribute to attract investments, the PPs have been assessed against four criteria: (a) efficient allocation of public investment resources, (b) the risk of distortive state aids, (c) opportunities for private investments and (d) economic rationality of port charges. The main impact will stem from the measures obliging transparency in the use of public funds in ports. This requirement will contribute to a more rational selection of port investment projects (a). It will also allow the Commission to address much more effectively concerns of unfair competition between ports in reason of non-notified (unseen) state aid (b). It will lead to a better investment climate (c) by reducing uncertainties on the economic return of projects. Measures clarifying and facilitating the market access will also contribute to a better climate for private investors (c) by creating more legal certainty. Finally, measures on port infrastructure charges can result in more economic rationality (d) in charging and lead to more efficient investments by port authorities. Table 22 presents a summary.

**Table 22: Impact of the policy packages on the investment climate**

|  | PP1 | PP2 | PP2a | PP3 |
|--|-----|-----|------|-----|
| Efficient allocation of public funding       | +   | ++  | ++   | +++ |
| Lower risks of distortive state aid to ports | +   | ++  | ++   | +++ |
| Better climate for private investment        | +   | ++  | +++  | ++  |
| Economic rationality of port charges         | +   | +++ | ++   | +   |

("+" refers to the intensity of a positive correlation: for instance in the case of "lower risks of distortive state aid to ports", a "+" means less risk on distortive state aids)

#### Regional distribution of impacts

Interestingly in all PPs the impacts will vary according to the regions. Opening up market entrance to investors in new facilities in reason of port expansion needs would have significant impacts in the North Sea and Baltic Regions, given the expected growth in energy trades, in particular liquefied gas, which require important investment in terms of reception, storage and distribution capacities. Further economic integration of the Baltic States in the internal market and growing exchanges with Russia would require reinforcing capacities in other port segments (Ro-Ro) in both regions.

The PPs could also have a significant impact in the Mediterranean regions, where new ports projects would be needed in the North Adriatic and where the potential for short sea shipping development (modal shift road to ports, exchanges France, Italy, Spain) is especially high (see 6.1.5). In the UK, where there is already considerable private sector involvement, the ports would not be affected. In Spain and Italy it can be expected that greater autonomy for port authorities will lead to better service provision and more targeted investments. In turn this would help to counter the competitive threat from port developments in North Africa. A more horizontal discussion of the impacts per PPs is provided below:

- In PP1 the main measures having an impact on investments concern the application of the financial transparency directive to all TEN-T ports and the requirement of transparency in respect of port charges calculation. Enforcing financial transparency will have a positive impact on both the efficient allocation of public resources and will

reduce the risk of distortive state aids. This will also allow attracting more private investors as they do not risk to be confronted with unexpected surprises related to potentially illicit state aids. Transparent port charges and supervision over the specific port service charges will have a positive influence on setting these charges according to economic rationality.

- In PP2, in addition to the measures considered in PP1, the measures with an impact on investments would be the freedom to provide service or the systematic recourse to public tendering for new contracts; the obligation of keeping separate accounts for statutory functions and commercial operations of publicly owned port authorities and the requirement for cost-based and differentiated port charges. Public tendering ensures efficient allocation of public resources and avoids distortive state aids by using market procedures. Separate accounts increase the transparency and as mentioned above, transparency potentially attracts more private investments because of risk reduction. Cost based port charges will maximise their efficiency.
- PP2a, in comparison with PP2, introduces a higher recourse to public tendering (also for substantial modifications of existing contracts). It also gives a wider autonomy to port authorities to define their charging policy, while at the same time ensuring transparency, which could result in an enhanced economic rationality of port charges. A greater competitive pressure and the financial autonomy of ports will contribute to more efficient investments. Investment flows for both infrastructure and equipment in terminals will be higher in particular in the areas where port businesses are expected to grow more, i.e. North Sea / Baltic regions.
- PP3 is quite similar to PP2 and PP2a. However, the requirement of two operators for the same type of operation in every port might discourage investments in small and medium ports, where there is no market prospect for two operators. The obligation to create central port coordination and the functional/legal unbundling could also be seen as an administrative burden by private investors. However, the functional/legal unbundling could ensure a more efficient allocation of public funding and could lower the risks of distortive state aids.

### 6.1.3. Administrative burden

The administrative costs generated by each PP against the baseline scenario are presented in table 23. The costs for the public sector and the costs for the businesses have been treated separately. The elements estimated include: average annual cost for awarding contracts with tendering procedures, average annual cost sustained for service tariff setting and/or reviewing, recurrent yearly costs for central port coordination, recurrent yearly costs for port users' committee, recurrent yearly costs for port dues calculation, one off and recurrent annual costs to be incurred for functional/legal separation and the one off cost for separation of accounts.

The underlying assumptions are based on estimates related to the number of ports; of service contracts awarded to private operators; of contracts with value above € 5 million; of port services contracts linked to PSOs, spaced constraints and normal contracts; of port services and terminal contracts awarded with public tendering procedures; of port services provided in-house or awarded with exclusive rights; and unit costs such as unit labour costs and overhead costs. The detailed calculation and assumptions are provided in annex IX.

**Table 23: Additional administrative costs per policy package (PWC, 2013)**

|  | Recurrent (€million / year) |            | One off (€million) |            |
|--|-----------------------------|------------|--------------------|------------|
|  | Public sector               | Businesses | Public sector      | Businesses |
|  |                             |            |                    |            |



|      |      |      |       |      |
|------|------|------|-------|------|
| PP1  | 9.0  | 16.2 | 9.9   | 15.7 |
| PP2  | 7.7  | 14.0 | 32.4  | 15.7 |
| PP2a | 2.3  | 2.2  | 24.4  | 0.8  |
| PP3  | 33.0 | 3.9  | 121.8 | 0.8  |

PP2a imposes the lowest administrative burden both for the public sector and the businesses. The freedom to provide services reduces the overall need for public tendering. This introduction of public tendering and the freedom to provide services principle reduce the needs for a regulatory supervision of price. Other comparative savings can be introduced by the 'user committee' which ensures a light form of coordination which is cheaper than the central coordination currently practiced in a number of ports and proposed in PP3.

In PP2 the results are not as positive as in PP2a because in PP2 the regulatory supervision of price continues to be widely applied to all operators with exclusive rights, even if selected in the framework of public tendering procedures.

PP3 entails very significant administrative costs for the public sector (port) because of 1) the functional/legal separation which would impose to double the accounting/management systems which are currently integrated and 2) the central coordination to be ensured by the port authority which would be generalised to all ports. However, PP3 will not induce high administrative cost for undertakings as the need for a regulatory supervision of prices is reduced since the free market access will reduce their monopolistic positions.

Finally, PP1 generates a slight increase of administrative cost, in particular for businesses because of the measure related to financial transparency and the need to develop a regulatory supervision of price given the lack of free market access.

In contrast to PP2 with a lower administrative cost, the soft law approach to clarify market access rules do not suffice to generate a substantial freedom to provide services, which would have in turn avoided public tendering or approval procedures.

#### **6.1.4. SMEs**

Providers of port services like mooring, towage, pilotage or bunkering are typically SMEs or microenterprises (30%-50%). It is therefore relevant to look in more details the impact on these types of undertakings. The introduction of free market access in PP2, PP2a and PP3 will contribute to a more business-friendly and entrepreneurial environment and is likely to facilitate the creation/establishment of SMEs and microenterprises. However, as seen in 6.1.3, PP2a is the policy package which creates the smallest additional administrative costs for SMEs and microenterprises.

Port services like towage or cargo handling are capital intensive and benefit stronger from economies of scale and consolidation. When more transparency and open market access apply, bigger entities are likely to reinforce their market position, which risks pushing out the market some SMEs or microenterprises operating today in specific markets. A level playing field based on the principles of transparency, non-discrimination and proportionality will allow other SME or microenterprises, especially operating supporting services like cleaning, catering, dedicated services related to maintenance of specialised equipment to further develop their business.

Overall, none of the PPs contains particular obligations on SMEs, i.e. public-owned SMEs are not caught by the Transparency Directive, usually, SME are not protected by exclusive or special rights, are not involved in the setting of port charges, etc. As stated above, a better

business environment will grant more opportunities for creating new SMEs in the port sector, opening up investment and job creation opportunities.

### 6.1.5. Impact on transport and multimodality

All PPs, and in particular PP2a and PP3, generate increase of maritime transport activities, notably modal shift from land to sea transport, by decreasing port costs and improving the logistic efficiency of ports. (PwC, 2013) carried out a detailed modelling exercise based on direct costs (the indirect cost savings could not be quantified) (see also table 25).

The increase of total maritime transport and port activity at EU level although modest is noticeable. A more careful look indicates an increase of up to 1.88% for short sea shipping (15.9 billion tonne-kilometres) and a corresponding decrease of up to 0.16% of road transport over 300 km (2.9 billion tonne-kilometres), which suggests a clear contribution of PP3 and, to a smaller extent, of PP2a to one of the key modal shift goals of the White Paper (Annex VII provides detailed results and an explanation of the model used).

The impact would not be uniform in all intra-EU maritime routes because of the geographical locations. Around a bay or an inland sea - where distances are long enough to make sea transport competitive or where there is no choice except to use sea transport – making short sea shipping more attractive, notably than land transport, would lead to increase of short sea shipping on certain routes to up to 6.5% (table 24 provides the potential increases for PP3).

It should be noted that on saturated land corridors even a small decrease of road freight transport generated by more efficient short sea shipping can have a proportionate higher impact on congestion reduction.

Therefore, an important conclusion is that although the additional waterborne traffic increases that can be expected from the different PPs are relatively moderate, all PPs are likely to contribute to mitigate the risk of congestion by widening modal choices, enabling more balanced spread of traffics.

**Table 24: Potential changes (%) of short sea shipping tonnage (PWC, 2013)**

| Potential changes of short sea shipping between different coastal regions (PWC) |          |          |                |          |             |              |
|---|----------|----------|----------------|----------|-------------|--------------|
| REGION  | East Med | Cent Med | West Med / Atl | UK / IRL | North Range | Scand / Balt |
| East Med  | 1.51     | 6.50     | 1.98           | 0.68     | 0.64        | 0.24         |
| Cent Med  | 8.39     | 6.12     | 6.43           | 0.25     | 2.68        | 1.19         |
| West Med / Atl  | 1.25     | 4.79     | 6.56           | 2.67     | 2.35        | 0.83         |
| UK / IRL  | 0.16     | 0.07     | 3.90           | 3.23     | 1.10        | 1.36         |
| North Range   | 0.51     | 4.54     | 1.80           | 1.54     | 4.34        | 2.59         |
| Scand / Balt  | 0.37     | 0.84     | 3.09           | 5.04     | 5.35        | 2.49         |

Categories cover: East Med (Greece, Black Sea EU, Slovenia); Cent Med (Italy, Malta, French Med); West Med/Atl (Spain, Portugal, French Atlantic); UK/IRL; North Range (Hamburg-Le Havre); Scand/Balt

Some additional considerations about the impact of the different PPs on multimodality are (see also table 25):

- PP1: The measures in this package would only have small impacts for enhancing the competitive advantage of maritime transport over road transport. The main effect would come from the transparency of port dues calculation (assuming that transparency would lead to rationalisation of dues) and from the supervision by an independent authority of prices of port services provided under exclusive rights.
- PP2: This package would have a more marked impact thanks to a more competitive provision of port services, in particular in the Baltic, Iberian Peninsula and

Mediterranean regions. However, competitive pressure leading to more attractive port services for shippers and cargo-owners would be limited to new contracts, i.e. port projects carried out by new entrants.

- PP2a: Introducing competitive tendering both for new contracts and in case of substantial changes to existing contracts would lead to an increase of freight volumes for short sea shipping quite higher than in PP2.
- PP3: The measures in this package are aimed to ensure greater competitive pressure in ports. However, contrary to expectations, the results are not much higher than PP2a. The prescriptive approach of the measures, i.e. imposition of two operators per service, could interfere with the autonomy of ports to adapt quickly to market developments and changing users' needs.

### **6.1.6. International competitiveness**

All PPs will improve the international competitiveness of Southern European ports which today lose transshipment business to North African ports and, to a smaller extent, Baltic ports having to compete with Russian ports. Competition with non EU ports is indeed particularly fierce on transshipment which is a very specific and highly volatile market.

Today, the TEN-T ports struggle to compete with neighbouring ports because of lower salaries in third countries. The PPs contributing to the modernisation of services and a better investment climate will help them to achieve productivity gains stemming e.g. from innovation, specialisation and/or logistics performance. When the TEN-T ports become more efficient and have their operating costs reduced, their competitive stance will improve. As already demonstrated before, the effect of PP1 will be limited. PP2, PP2a and PP3 all achieve meaningful efficiency gains allowing EU ports to offer more competitive services. However, only PP2a and PP3 allow for instance rebates of infrastructure charges for vessels used in transshipment. As already seen PP3 would however entail more administrative burden by imposing at least two operators for every service.

Another aspect related to competitiveness is linked to the fact that the shipping and the port related business is global. The better investment climate generated by the PPs will attract foreign direct investments in the TEN-T ports. Caution may however be warranted to ensure that the possible further vertical integration which may result from it does not give rise to possible abuse of dominant positions<sup>109</sup> and more generally to loss of control of EU strategic interests. Moreover, to secure the worldwide competitive position and business and investment opportunities for EU-based global players, it may be appropriate that reciprocal access to non-EU markets (without undue restrictions) is facilitated.

### **6.2. Environmental impacts**

All the PPs contribute to reduce the overall environmental impact of transport insofar as they all contribute to make maritime transport more attractive in comparison to road transport and are in line with the objectives of the Transport White Paper (2011).

Table 25 provides for each PP an overview of the increase in short sea shipping, the decrease of road transport over 300km (one of the goals of the White Paper) and the corresponding gains in external costs, based on a model by PWC (2013) who used the WORLDNET (FP6)

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<sup>109</sup> Vertical integration refers to the fact that shipping companies also own and operate dedicated terminals: e.g. COSCO, APMT and Maersk, Terminal Links and CMA CGM or that terminal operators are also getting more control over the hinterland connections: e.g. Hutchison. Annex II provides more information on this issue.

approach to estimate multimodal routes following the methodology used in the study “Ports and their connections within the TEN-T” (DGMOVE, 2010). This model assigns flows to multimodal mode chains, thus estimating port choice, and the sensitivity between land and sea options. The calculation is made using 2010 network and flow data obtained from the ETISplus (FP7) transport information system. The input variable used is the port cost, in line with the modelling assumptions to calculate the savings in total port costs as discussed in section 6.1.1. Annex VII provides more detailed information on the assumptions and calculations.

Although all PPs would result in a reduction of external costs, the benefits are the largest for PP3, closely followed by PP2a. Road transport over 300 km would decrease by 0.16% in PP3 and by 0.14% in PP2a. This would generate savings of external costs of the order of respectively €76 and 69 million per year.

Moreover, PP2a encourages port authorities to introduce port dues which vary according to the environmental performance of ships. The impact of such differentiation on the greening of the fleet calling at EU ports will widely depend on the amplitude of the variation and the classification used and the degree of coordination at regional level. A wide geographical scope of environmental charges would be much more effective, which is an argument for regional or EU wide coordination.

**Table 25: impact on short-sea shipping, modal shift and external costs (PwC, 2013)**

|      | Increase in Short Sea Shipping (%) | Change in road>300km (in billion Tonne-Km) | Change in road>300km % | External Costs (€m/pa) | Change in maritime Tonne-Km |
|------|------------------------------------|--|------------------------|------------------------|-----------------------------|
|      | Short sea shipping Increases       | Long distance road decreases               |                        | External costs fall    | billion tonne km            |
| PP1  | 0.49%                              | -0.833                                     | -0.04%                 | -23                    | 3.603                       |
| PP2  | 0.73%                              | -1.249                                     | -0.07%                 | -34                    | 5.404                       |
| PP2a | 1.63%                              | -2.634                                     | -0.14%                 | -69                    | 13.311                      |
| PP3  | 1.88%                              | -2.972                                     | -0.16%                 | -76                    | 15.942                      |

Environmental impacts are in general for the better of the whole society, though for some economic or social actors these impacts come at a specific cost. In the case of PP2 and PP2a, shipping companies risk paying increased port charges in the event port authorities decide to apply environmental differentiated charges.

This has a specific short term effect, as on the long term this will create a level-playing field in line with the application of the polluter pays principle and as all ship operators will follow the incentive to operate cleaner ships. So, while all stakeholders in the end benefit from a better environmental performance, some will have to face specific challenges, especially when internalising the external costs.

Overall, PP2 will contribute to better environmental services in ports, including services aimed to reduce ship waste, air and water pollution, by contributing to the correct functioning of the market and by providing supervision by an authority in cases of complaints related to prices and/or quality of the services.

### 6.3. Social impacts

In all PPs the possible productivity gains usually associated with technological changes generated by the policy packages could mean that job profiles need to change and labour practices to be adapted. In the short term it may eventually lead to a reduction of the number of jobs in some ports that, today, remain labour intensive. But in the medium and long term, all

PPs would generate additional port activities and have a net positive impact on the creation of jobs. Long standing statistical evidence shows that maritime traffic increases are indeed associated with new jobs creation.

According to the so-called "Antwerp rule"<sup>110</sup>, every additional million tonnes of port throughput creates roughly 90 new cargo handling jobs. Cargo handling jobs are approximately 10% of total direct employment including non-maritime employment, and 20% of direct maritime employment. The impact of the different PPs has been accordingly estimated by PwC, 2013 assuming conservative multipliers disaggregated by type of cargo (e.g. handling energy is less labour intensive than containers) and productivity gains resulting from the market opening and transparency measures in the different packages. The results reveal that the number of port workers will increase from the present day figure of around 110,000 to 163,000 jobs generated by the traffic growth until 2030 in the baseline scenario<sup>111</sup>. On top of that (see table 26), 2,537 new jobs would be created in PP3 and 658 in PP1. All PPs have therefore a net positive impact on the creation of jobs, though modest. The detailed calculation and assumptions are provided in annex VII.

**Table 26: Additional jobs compared to baseline scenario (110 000 to 163 000 new jobs by 2030) (PWC, 2013)**

| 2030 | New jobs |
|------|----------|
| PP1  | 658      |
| PP2  | 987      |
| PP2a | 2,199    |
| PP3  | 2,537    |

It should be noted that according to OECD research (2012), higher multipliers could be used, according to which an increase of one million tons could generate 300 jobs and in the long run 7.500 jobs, which suggests potentially much more significant job creations. The figures would however change depending on the multipliers of each individual port region (in the case of, e.g. Hamburg, the multiplier is 1.71; for Rotterdam 1.13 and for Le Havre/Rouen there are estimates of 1.57)<sup>112</sup>, and an extrapolation at EU level is therefore difficult.

The measures regulating the market access for cargo handling services in PP2, PP2a and PP3 could be contested by the unions of dockers in a number of Member States and deteriorate the social climate in ports. It should be noted that the cost of strikes and blockades can be very high because of typical daily multi-million euro losses (in large ports) but also because of the risk for the image of the port.

"Costs of strike in port of Antwerp 1 million euro per hour" – February 2012: As a result of the strike in the port of Antwerp expenses increased during the last few days. "Roughly estimated this is about one million per hour for the port of Antwerp" Johan Claes of the Belgian New Fruit Wharf tells. "Then we talk about a direct loss and not about any consequential one." The 1 million euro per hour cost for a strike in the port of Antwerp was confirmed by the spokesperson of the Port of Antwerp, who also emphasised the damage to the ports' reputation, following a strike end January 2012.

Proper change management to accommodate the transition and avoid destructive industrial disputes can therefore be particularly useful. In this respect, it needs to be emphasised, that in case of changes of operator after a public tender procedure (foreseen in PP2, PP2A and PP3), Member States could be allowed to extend Directive 2001/23/EC to the employees involved in

<sup>110</sup> Dock labour and port-related employment, T. Notteboom, 2010

<sup>111</sup> The baseline scenario assumes EU measures to enhance port capacity, i.a. TEN-T.

<sup>112</sup> See OECD (2012) papers on "The Competitiveness of Global Port Cities"

order to safeguards their rights. The Directive specifies the rights and obligations of employers and employees affected. It establishes that the transfer of an undertaking is not a ground for dismissal. This Directive applies to all types of employment relationships, without distinction in relation to the number of working hours and the type of employment contract (undetermined, fixed-duration, or temporary).

At various stages of the impact assessment process, the unions called for protest actions in EU ports and adopted a declaration announcing strikes<sup>113</sup>. The public hearing of 18 January 2013 could however clarify the scope of the Commission's work on the ports policy review, of which the establishment of an EU Social Dialogue Committee for the port sector is a corner stone (see section 5.1). Following the hearing, the unions adopted a unitary resolution welcoming the Commission's willingness to support the Social Dialogue process and calling off the announced strikes<sup>114</sup>.

Taking account that measures touching on labour regimes have been discarded and that the envisages measures take a very careful approach regarding cargo-handling activities in ports, no particular impact<sup>115</sup> in terms of wages, labour relations and labour conditions is expected.

#### 6.4. Mapping of impacts per stakeholder

One needs to be aware that the impacts will be different for the distinct categories of stakeholders. In table 27, a qualitative assessment is given.

**Table 27: Mapping of impacts per stakeholder**

| <i>Stakeholder</i>                               | <i>PP1</i>   | <i>PP2</i>  | <i>PP2a</i>   | <i>PP3</i>  |
|--|--|---|---|---|
| <b>Port Authorities</b>                          | Benefits from the (modest) increased traffic while confronted with a specific and relatively limited additional administrative burden                  | Benefits from the increased traffic and investments while confronted with a specific and relatively limited additional administrative burden  | Benefits from the increased traffic and investments while confronted with a specific and relatively limited additional administrative burden  | More competition presents business opportunities. Though, the competitive framework presents significant administrative burden                |
| <b>Port dependent businesses &amp; operators</b> | Benefits from the (modest) increased traffic and investment opportunities  | Benefits from the increased traffic and investment opportunities  | Benefits from the increased traffic and investment opportunities  | More competition creates more business and investment opportunities   |
| <b>Port workers</b>                              | Benefits from the (modest) increased traffic though specific transitions in the kind of jobs and the nature of the port work needs to be accounted for | Benefits from the increased traffic though specific transitions in the kind of jobs and the nature of the port work needs to be accounted for | Benefits from the increased traffic though specific transitions in the kind of jobs and the nature of the port work needs to be accounted for | Benefits from the increased traffic though specific transitions in the kind of jobs and the nature of the port work needs to be accounted for |
| <b>Shipping sector</b>                           | Modest benefits from the long term changes in price and  | Benefits from the transparency and changes in price and   | Benefits from the transparency and changes in price and   | Benefits from the competitive pressure and resulting  |

<sup>113</sup> See [http://www.idcdockworkers.org/index.php?option=com\\_content&task=view&id=216&Itemid=](http://www.idcdockworkers.org/index.php?option=com_content&task=view&id=216&Itemid=)

<sup>114</sup> See: [http://www.idcdockworkers.org/index.php?option=com\\_content&task=view&id=222&Itemid=1](http://www.idcdockworkers.org/index.php?option=com_content&task=view&id=222&Itemid=1)

<sup>115</sup> Market dynamics involve that a growing activity in ports will lead to a growing demand for workers; however, the types of jobs and retributions will be determined for the particular circumstances of each type of trade, business, port, etc.

|   |  |  |  |  |
|---|--|--|--|--|
|   | service levels   | service levels   | service levels   | changes in price and service levels  |
| <b>Sector regulators</b>                            | Limited impact   | Modest, but specific and additional administrative tasks   | Specific and additional administrative tasks   | More specific and additional administrative tasks  |
| <b>Freight forwarders and shipping agents</b>       | Benefits from the (longer term) better functioning of the ports and related business opportunities                     | Benefits from the better functioning of the ports and related business opportunities                         | Benefits from the better functioning of the ports and related business opportunities                         | Benefits from the better functioning of the ports and related business opportunities                         |
| <b>Maritime passengers</b>                          | Benefits from the (longer term) better functioning of the ports and related business opportunities                     | Benefits from the better functioning of the ports and related business opportunities                         | Benefits from the better functioning of the ports and related business opportunities                         | Benefits from the better functioning of the ports and related business opportunities                         |
| <b>EU industries</b>                                | Benefits from the (modest) increased performance (on the longer term) of the ports (cheaper and more reliable service) | Benefits from the increased performance of the ports (cheaper and more reliable service)                     | Benefits from the increased performance of the ports (cheaper and more reliable service)                     | Benefits strongly from the increased performance of the ports (cheaper and more reliable service)            |
| <b>SME (in particular those active in the port)</b> | Opportunities for supporting and secondary SME's – risks for the more capital intensive ones                           | Opportunities for supporting and secondary SME's – risks for the more capital intensive ones                 | Opportunities for supporting and secondary SME's – risks for the more capital intensive ones                 | Opportunities for supporting and secondary SME's – risks for the more capital intensive ones                 |
| <b>Final consumer</b>                               | Better ports lead to cheaper transport and cheaper products (longer term effect)                                       | Better ports lead to cheaper transport and cheaper products (modest to high effect)                          | Better ports lead to cheaper transport and cheaper products (modest to high effect)                          | Better ports lead to cheaper transport and cheaper products (high effect)                                    |
| <b>Tax payers</b>                                   | Transparency leads to more efficient public investments  | Better use of capacities and climate for investors reduce needs for, and encourage efficient, public funding | Better use of capacities and climate for investors reduce needs for, and encourage efficient, public funding | Better use of capacities and climate for investors reduce needs for, and encourage efficient, public funding |

## 6.5. Summary of the economic, environmental and social impacts

Table 28: Summary of the aggregate economic, environmental and social impacts.

| Impact compared to the baseline     | Baseline Scenario  | PP1  | PP2  | PP2a  | PP3   |
|-------------------------------------|--|--|--|---|---|
| Direct and indirect transport costs | Risk of degradation of port services<br>Congestion costs and associated externalities [€0 million savings] | Small reduction of port costs [€ 318 million annual savings]<br>But indirect costs remain (poor reliability/ efficiency of some TEN-T ports, congestion costs) | Small reduction of port costs [€ 481 million annual savings]<br>Small reduction of indirect transport costs (including road congestion) and modest increase of SSS modal | Significant reduction of port costs [€1.071 annual million savings], improved reliability of ports and reduction of other indirect costs due to | Significant reduction of port costs [€1.245 annual million savings], improved reliability of ports and reduction of other indirect costs due to |

|                                     |  |  |  |   |   |
|-------------------------------------|--|--|--|---|---|
|                                     |  | and associated externalities,)   | shift and reduced congestion   | increase of SSS, modal shift and reduced congestion   | increase of SSS, modal shift and reduced congestion   |
| Investments                         | Loss of investment opportunities. Issues regarding sound use of public funds             | Loss of investment opportunities. Some improvement regarding use of public funds   | Opening up of market opportunities in ports;   | Opening up of market opportunities in ports   | Opening up of market opportunities in ports   |
| Administrative burden               | Increase of complexity due to most demanding logistic procedures                         | Possible improvements in ports following voluntary recommendations   | Burden created by price supervision but possible improvement in coordination and adaptation of ports to users' needs | Possible improvement in coordination and adaptation of ports to users' needs  | Burden for smaller ports created by central coordination and heavier tendering procedures   |
| SMEs                                | Market foreclosure and legal uncertainty for a significant number of SME                 | Improvements in ports adopting thanks to voluntary action  | Possibility of creation of new SMEs and jobs in ports  | Possibility of creation of new SMEs and jobs in ports   | Possibility of creation of new SMEs and jobs in ports   |
| Multimodality <sup>116</sup>        | Improvements only in ports tackling road transport concerns in a voluntary basis         | Some additional ports will adopt "best practices" promoting rail and inland waterways  | Some additional ports will adopt "best practices" promoting rail and inland waterways                                | Incentives and taking account of users' needs enable ports to better contribute to multi-modal objectives   | Incentives and taking account of users' needs enable ports to better contribute to multi-modal objectives   |
| Environmental impact <sup>117</sup> | Improvements only in ports applying environmental rewarding schemes on a voluntary basis | Small potential of improvements in ports because of the lack of incentives and guidance. Transparency will most likely not have a big effect on the internalisation. | Obligatory internalisation will lead to positive environmental performance   | Improvement in the provision of cost-efficient environmental services in ports, based on best practices and a voluntary reward scheme. Linked to market incentives and green marketing, internalisation will penetrate the port business. | Less potential of improvement in the provision of cost-efficient environmental services in ports, because of the lack of guidance, though market potential remains significant. |
| Social Impact                       | Structural losses of jobs in ports in decline [0 additional jobs]                        | Structural losses of jobs in ports in decline [658 direct jobs + indirect jobs]  | Potential of new jobs linked to new investments and creation of business in ports                                    | Potential of new jobs linked to new investments and creation of business in   | Potential of new jobs linked to new investments and creation of business in   |

<sup>116</sup> In addition to the modal shift impacts described in the first row on transport costs

<sup>117</sup> Idem



|  |  |  |                                   |  |   |
|--|--|--|-----------------------------------|--|---|
|  |  |  | [987 direct jobs + indirect jobs] | ports. Stability of employment and good social climate (provided that the Social Dialogue works) [2,199 additional jobs+ indirect jobs], | ports. Stability of employment and good social climate (provided that the Social Dialogue works) [2,537 additional jobs+ indirect jobs] |
|--|--|--|-----------------------------------|--|---|

(+ refers to a positive correlation: for instance in the case of administrative burden, more + means less burden, in the case of environmental impacts, more + means better taking environmental considerations into account)

## 7. COMPARING THE OPTIONS

The policy packages were assessed against the following criteria:

- **Effectiveness:** the extent to which policy packages achieve the operational objectives
- **Efficiency:** the extent to which policy packages can achieve the operational objectives at least cost
- **Coherence:** the extent to which policy packages are coherent with the overarching objectives of EU policy, and the extent to which policy options are likely to limit trade-offs across the economic, social, and environmental domain

### 7.1. Effectiveness

PP1 will be effective in achieving OO1, but only on a longer term. The regulatory supervision of price of port services (OO2) in monopolistic cases should be effective although it may entail, given the lack of free market access, a too heavy task for national administrations. The port users' committee (OO3) will bring all the users of specific ports together in order to avoid serious conflicts and a good operation of the port. The financial transparency (OO4) will allow responsible authorities to verify if state-aid is involved and on the basis of that decide if corrective intervention is required. Transparent port dues (OO5) will not directly change the level or application of the dues but will allow a transparent dialogue between authorities and users, paying the dues. This can lead to more appropriate charging practices in the long term.

PP2 is effective in creating a clear regulated market access framework (OO1) for all actors in the ports by imposing the freedom to provide services and/or introducing public tendering procedures. The confinement of internal operators (OO2) will prevent public funded services to compete with privately funded services, avoiding market distortions by public entities. Market abuses will be tackled even further by price supervision (OO2). The port users' committee (OO3) will bring all the users of specific ports together in order to avoid serious conflicts and a good operation of the port. The separation of accounts (OO4) will introduce transparency in the different operations. Binding rules on port charges will ensure an EU-wide application of cost-based charging and the internalisation of environmental costs (OO5).

By also introducing public tendering for substantial changes to existing contracts (OO1) PP2a will achieve an even higher effectiveness. In PP2a, the effectiveness related to OO2 is similar to PP2. The extended public tendering obligations should ensure correct market prices without having to have recourse to price supervision, except in those cases where no public tendering is applied. The freedom for port authorities to set port infrastructure charges in combination with transparency requirements for port infrastructure charges calculations and the possibility to differentiate for environmental performance of ships, further increases the effectiveness (OO5).

PP3 will also be effective in realising OO1: by setting clear rules and introducing minimal 2 operators for every service provision, all ports and operators will be faced with a minimal level of competition. The general principle of public tendering and the confinement concept, together with a price control in those cases where public tendering was not applied will ensure the effective implementation of OO2. Central port coordination (OO3) will ensure effective coordination inside the port. The functional/legal separation will install firewalls and introduce individual entities for every service provision. This will ensure the effective implementation of OO4. Though, the freedom for ports to set their own dues without further guidance or rules could entail a lower effectiveness than PP2a (OO5).

## 7.2. Efficiency

The efficiency of the policy packages, i.e. the extent to which policy packages can be achieved at least cost, is assessed taking into account the potential annual savings in total port costs, external costs and the administrative costs. As already indicated before, because of the nature and diversity of the EU port system, the calculations and assumptions needed to be aggregated and sometimes generalised. Therefore, while the quantified estimates do indicate a trend-line, one needs to be prudent in the interpretation of the exact figures. A summary is in table 29.

**Table 29: Net annual efficiency gains and one off administrative costs (€million) (PWC, 2013)**

|             | Annual savings in total port costs (1) | Annual savings in external costs (2) | Total annual savings (3) = (1) + (2) | Annual administrative costs |                         |                                   | Net annual efficiency gains (7) = (3) – (6) | One off administrative costs |                         |                          |
|-------------|--|--------------------------------------|--------------------------------------|-----------------------------|-------------------------|-----------------------------------|---|------------------------------|-------------------------|--------------------------|
|             |  |                                      |                                      | Cost for public sector (4)  | Cost for businesses (5) | Total annual cost = (4) + (5) (6) |   | Cost for public sector (8)   | Cost for businesses (9) | Total one off costs (10) |
| <b>PP1</b>  | 318,15                                 | 23                                   | 341.15                               | 9,0                         | 16,2                    | 25.2                              | <b>315,95</b>                               | 9,9                          | 15,7                    | <b>25.6</b>              |
| <b>PP2</b>  | 481,47                                 | 34                                   | 515.47                               | 7,7                         | 14,0                    | 21.7                              | <b>493,77</b>                               | 32,4                         | 15,7                    | <b>48.1</b>              |
| <b>PP2a</b> | 1071,37                                | 69                                   | 1140.37                              | 2,3                         | 2,2                     | 4.5                               | <b>1135,87</b>                              | 24,4                         | 0,8                     | <b>25.2</b>              |
| <b>PP3</b>  | 1245,21                                | 76                                   | 1321.21                              | 33,0                        | 3,9                     | 36.9                              | <b>1284,31</b>                              | 121,8                        | 0,8                     | <b>122.6</b>             |

- Total annual savings (column 3 in table 29): PP1 has the lowest effect on total annual savings in total port costs and external costs. PP2 performs marginally better in this respect. PP2a more than doubles the total annual savings from PP2 and PP1. PP3 even scores marginally better than PP2a in this respect.
- Total annual administrative costs (column 6 in table 29): PP2a imposes the lowest administrative burden compared to the other policy packages, both for the public sector and the businesses. In this respect it is followed respectively by PP2, PP1 and PP3. PP3 imposes the highest administrative burden. This is mainly because of the burden for the public sector, as for businesses PP3 scores better than PP1 and PP2.
- Net annual efficiency gains (column 7 in table 29): PP3 has the highest net annual efficiency gains, calculated by summing up the total annual savings in port costs and external costs, after deduction of the annual administrative costs. It is closely followed by PP2a. PP2 and PP1 are in this respect much less effective than PP2a and PP3, as their net annual efficiency gains are more than halved compared to PP2a and PP3.
- One off administrative costs (column 10 in table 29): The one off administrative costs are the lowest for PP2a, closely followed by PP1. PP2 and PP3 are respectively almost double or five times as costly as PP2a in this respect.

It can be concluded that with regard to net annual efficiency gains PP3 scores the best, but is very closely followed by PP2a, for which the total one off administrative cost is almost five times as low as for PP3. PP1 and PP2 score much worse than both PP2a and PP3.

### 7.3. Coherence

All policy packages are from the individual perspective in line with the completion of the internal transport market and are coherent with the EU policy objectives reflected in the Single Market Act, the White Paper on Transport and Europe's 2020 growth strategy.

In order to be able to respond appropriately to all the objectives, the policy packages were built with a balance of economic, environmental and social measures, to avoid that action on one pillar would imply very negative consequences on the other. Consequently, the different policy packages are overall built to be coherent, each one containing measures to ensure that the social, environmental and economic impacts are mutually counterbalanced in each package.

However, because of the nature of the policy measures related to market opening of the port services market, a certain degree of trade-off between economic and social impacts could not be avoided. The analysis indicates that all policy packages present a trade-off between economic and social impacts. In PP2, PP2a and PP3 the risk of social tension in relation with the lifting of restrictions to the market access, and more specifically for cargo handling, cannot be neglected. In PP3 this risk is the biggest as the degree of market opening is the highest in this policy package. In PP1 this risk is the lowest. For PP2 and PP2a this risk can also not be neglected, especially not for cargo-handling services.

### 7.4. Summary on the comparison of policy packages

Table 30: Effectiveness, efficiency and coherence of the policy packages

|  | PP1             | PP2   | PP2a  | PP3                 |
|--|-----------------|---|---|---------------------|
| <b>Effectiveness</b>   | +               | ++  | +++   | +++                 |
| 001 clarify & facilitate access to the port services market  | +               | ++  | +++   | +++                 |
| 002 Prevent market abuse by port service providers with exclusive or special rights  | +               | ++  | ++  | ++                  |
| 003 To ensure the consultation of port users on the main decisions which affect the functioning of the port in all (100%) TEN-T ports by the end of the implementation date of the initiative  | +               | +   | +   | ++                  |
| 004 To ensure the transparency in the financial relations between public authorities, port authorities and port service providers in all (100%) TEN-T ports by the end of the implementation date of the initiative                          | +               | ++  | ++  | +++                 |
| 005 To ensure that all (100%) TEN-T port authorities are free to autonomously set their port infrastructure charges by the end of the implementation date of the initiative, with the possibility of environmental modulation of the charges | +               | ++  | +++   | ++                  |
| <b>Efficiency</b>  | +               | +   | +++   | +++                 |
| <b>Coherence</b>   | Minor trade-off | Limited trade-off except for cargo handling (important trade-off) | Limited trade-off except for cargo handling (important trade-off) | Important trade-off |

("+" refers to the intensity of a positive correlation, no negative or neutral correlations have been identified)

## 8. CONCLUSION: PREFERRED OPTION

PP2a and PP3 appear to be the most efficient and effective options, with net annual efficiency gains over €1 billion created by more efficient transport services, and with a better investment and business climate for ports. However, given the important trade-offs between social and economic impacts in PP3, PP3 is less coherent than PP2a. Therefore, **based on the analysis performed in this report, PP2a is the preferred policy option.**

PP2a will generate additional short sea shipping traffic of around 13.3 billion tonne kilometres, which will represent a significant increase of short sea shipping on a number of routes. This will lead to increased port activities which, according to conservative estimates, could create more than 2000 direct extra port related jobs plus indirect jobs.

**However, caution is required in connection with the measures related to market access and cargo handling<sup>118</sup>**, because of three aspects:

- There is an important trade-off with social issues. Social tensions in the cargo handling sector are still high and therefore a step by step approach for this sector could be more appropriate. Opening the market of cargo handling in PP2a could trigger a sudden degradation of the social climate at a time when important progress is being made through the creation of the European Social Dialogue. In the future this European Social Dialogue could pave the way for further legislative action.
- Cargo handling services are already exposed to some competitive pressure in many ports (intra or inter port competition between terminal operators, see table 6).
- Thirdly, a large part of cargo handling services are undertaken typically by means of concession contracts transferring the operational risk of operating a terminal to a private operator and are therefore falling within the scope of the future concession Directive. Until the time the concession Directive is adopted, the scope of the Directive will not be fully determined.

**Therefore, as regards the application of the measures related to clarification and facilitation of market access to cargo handling services<sup>119</sup> the approach of PP1 (non-binding Commission's Communication) could be equally warranted due to important trade-offs between economic and social objectives.** Indeed, it is to be noted that PP1 scores better than PP2a in terms of trade-offs. In this respect PP2 is not recommended as an alternative to PP2a as it entails the same risk as PP2a.

If this variant of PP2a<sup>120</sup> is eventually decided, the impacts initially estimated for PP2a would slightly decrease in intensity but would remain overall similar in tendency. The administrative costs would slightly decrease. A calculation using the methodology in Annex VII was done for this 'PP2a variant' and yielded the results presented in table 31.

**Table 31: Comparison PP2a and PP2a variant (excluding market access measures for cargo handling) (PwC, 2013)**

|   | <b>PP2a</b> | <b>PP2a variant</b> |
|---|-------------|---------------------|
| Change (%) in total port costs                | -6.8        | -4                  |
| Annual savings in total port costs (€million) | 1071.37     | 635                 |
| Increase of Short Sea Shipping (%)            | 1.63        | 0.97                |
| Induced tonnes Km (billion) in EU ports       | 13.311      | 7.205               |

<sup>118</sup> Measures 1, 2 and 5

<sup>119</sup> Operational Objective OO1 – policy measures 1, 2 and 5

<sup>120</sup> PP2a variant = PP2a with the only difference: an explanatory Commission communication on how existing rules apply to cargo handling services (measure 3) instead of proposing new legislation in this respect (measures 1,2,5)

|  |     |     |
|--|-----|-----|
| Administrative costs (recurrent – public) (€million)   | 2.3 | 2.1 |
| Administrative costs (recurrent - business) (€million) | 2.2 | 1.7 |
| Annual savings of external costs (€million)            | 69  | 46  |

The same reasoning may hold for passenger services and a similar approach could therefore also be envisaged. However due to unavailability of data a separate impact calculation could not be made.

## 9. MONITORING AND EVALUATION

The Commission services will monitor the implementation and effectiveness of this initiative through a set of core progress indicators, listed in table 32. The data will be gathered by means of the outcome of the PPRISM<sup>121</sup> project and in the form of a fact-finding survey. The Commission has also launched a research project under FP7 to look into the practical and operational requirements for setting up a port observatory which aims to provide data on a continuous basis.

Regarding evaluation, it is foreseen that three years after the end of the implementation date of the proposed legislation, the Commission services will carry out an implementation report to verify whether the objectives of the initiative have been reached. This evaluation will be carried out inter alia based on the core progress indicators mentioned below, and will be in line with the Commission requirements on evaluation.

**Table 32: Core progress indicators for monitoring purposes in the TEN-T ports**

| Operational objective  | Core progress indicators   | Source of data  |
|--|--|---|
| OO1: Clarify and facilitate access to port services market   | <ul style="list-style-type: none"> <li>- the number of service providers in ports for the different categories of port services</li> <li>- market shares of port service providers</li> </ul>                              | - fact finding survey   |
| OO2: Prevent market abuse by port service providers with exclusive or special rights   | <ul style="list-style-type: none"> <li>- number of new Commission infringement procedures linked to market abuse</li> </ul>  | - Commission data on infringements procedures / complaints received |
| OO3: Ensure the consultation of port users on the main decisions which affect the functioning of the port in all (100%) TEN-T ports by the end of the implementation date of the initiative                          | <ul style="list-style-type: none"> <li>- average number of procedures needed to enter/operate in a port</li> <li>- the number of newly installed port user committees in TEN-T ports</li> </ul>                            | - fact finding survey   |
| OO4: To ensure the transparency in the financial relations between public authorities, port authorities and port service providers in all (100%) TEN-T ports by the end of the implementation date of the initiative | <ul style="list-style-type: none"> <li>- number of new Commission infringement procedures linked to transparent financial relations between public authorities, port authorities and providers of port services</li> </ul> | - Commission data on infringements procedures / complaints received |
| OO5 To ensure that all (100%) TEN-T port authorities are free to autonomously set their port   | <ul style="list-style-type: none"> <li>- number of ports with autonomous port infrastructure charging</li> <li>- the number of new Commission</li> </ul>   | - fact finding survey   |

<sup>121</sup> <http://pprism.espo.be>

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| <p>infrastructure charges by the end of the implementation date of the initiative, with the possibility of environmental modulation of the charges</p> | <p>infringement procedures linked to port infrastructure charges in TEN-T ports</p> <ul style="list-style-type: none"> <li>- the number of newly installed methods for environmental modulation of port infrastructure charges in TEN-T ports</li> </ul> |  |
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