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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing a framework on market access to port services and financial transparency  
of ports**

(Text with EEA relevance)

{SWD(2013) 181 final}

{SWD(2013) 182 final}

{SWD(2013) 183 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### 1.1 Background

Europe is one of the most dense port regions worldwide. At the same time, the port sector is very heterogeneous and characterised by a wide diversity in types and organisation. This Regulation respects this diversity and does not seek to impose a uniform model for ports.

Over 1.200 commercial seaports operate along some 70.000 kilometres of the Union's coasts. In 2011, around 3.7 billion tonnes of cargo (more than 60 000 port calls of merchant ships) transited through European ports.

While the EU is highly dependent on its ports for its trade with the rest of the world, its ports also play a key role for its own internal market. Thus short sea shipping represents 60% of the tons handled in EU ports. Seaports are key nodal points of the EU intermodal transport chains using short sea shipping as an alternative to saturated land transport routes and as a way to connect peripheral or island areas.

In terms of passengers transport, EU ports handled 385 million maritime passengers in 2011.

Port activities contribute directly to employment, inward investment and GDP growth. 2,200 port operators currently employ around 110,000 port dockers. In total, ports represent up to 3 million (direct and indirect) jobs in the 22 maritime Member States and are a major source of tax revenues for local, regional or national governments.

96% of all freight and 93% of all passengers through the EU ports transit through the 319 seaports identified in the Commission's proposal for Guidelines on the trans-European transport network (TEN-T)<sup>1</sup>.

#### 1.2 Challenges

While the need to develop hinterland connections is well identified as a key challenge and already addressed through the TEN-T policy, other key challenges for TEN-T ports remain unresolved. First, there is the fact that today not all TEN-T ports are offering the same high-level service. Second, the current port governance framework is not in all cases attractive enough for investors. This together relates to five specific challenges:

##### *1.2.1 Sub-optimal port services and operations in some TEN-T seaports*

Efficient port services are crucial for the performance of the TEN-T seaports. The Commission, together with the sector, has identified three issues that may prevent port services from being organised in an optimal way: (1) many of the port services are subject to a weak competitive pressure due to market access restrictions; (2) monopolistic or oligopolistic, although justified in a number of situations, may lead to market abuses and (3) in some ports users are faced with too much administrative burden due to a lack of coordination within ports.

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

The investments required to adapt the port capacities to changing needs are only possible only in a stable policy and regulatory framework that will reduce economic uncertainties and ensure a level playing field. This however does not seem to be the case in all TEN-T ports.

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<sup>1</sup> COM(2011) 650 final/2. The final number of TEN-T ports will depend on the outcome of the on-going legislative procedure.

Several factors explain it: a) the legal uncertainties created by the market restrictions described above and b) the need for better infrastructure planning which can be tackled through stricter TEN-T rules.

But two other fundamental issues explain this current and overall unattractive investment climate in several TEN-T ports: (4) unclear financial relations between public authorities, port authorities and port services providers and (5) the weak autonomy of ports to define infrastructure charges and non-transparent links with the costs related to access infrastructure of ports.

### **1.3 Objective**

The objective is to contribute to the goal of a more efficient, interconnected and sustainable functioning of the TEN-T by creating a framework which improves the performance of all ports and helps them to cope with changes in transport and logistics requirements. The TEN-T ports must 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 which will stimulate growth of trade and cargo.

This initiative ensures a balanced approach between legislative action and a soft approach, exemplified by the Social Dialogue. This is the result of an intensive and pertinent consultation of the stakeholders that allowed to focus the Regulation on measures with a high EU added value. This Regulation will avoid additional burden for those ports already functioning well and will create the conditions for the other ports to deal with their structural challenges.

### **1.4 Consistency with other EU policies and objectives**

The proposal fits within the policy announced by the Commission in the White Paper on Transport (2011) and has been explicitly announced under the heading of a Single European Transport Area and market access to ports. The White Paper clearly states the intention of the Commission to review restrictions on provisions of port services and to enhance the transparency on ports' financing, clarifying the destination of public funding to the different port activities, with a view to avoid any distortion of competition. The proposal has also been identified as one of the key actions of the Single Market Act II and will contribute to the completion of the European Single Market.

The proposal completes and supplements on-going policies or proposals already made: the proposals on the trans-European transport network guidelines and the Connecting Europe Facility which provides a framework to support the development of hinterland connections to ports, the proposal for a Directive on the awards of concession contracts which applies to concession contracts in ports and the preparatory work on a Blue Belt initiative aiming at simplifying the customs procedures applied to EU goods carried by vessels calling at EU ports.

The proposal applies to all the ports of the TEN-T since by their very nature they all play a significant role in the European transport system either to facilitate the exchanges between Member States or to improve the regional accessibility of island or peripheral areas. It should however be stressed that the principles of non-discrimination and freedom of establishment of the Treaty on the functioning of the European Union and the competition rules also apply to the other ports, which although not in the trans-European network may have an important role at local level or for other sectors than transport like fishing or tourism. Member States may also decide to apply the provision of this proposed Regulation to these ports.

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

### **2.1 Consultation of interested parties**

DG MOVE has maintained a 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 social 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 on-line surveys and an open stakeholders' two-day conference in Brussels (25-26 Sept. 2012). A final targeted public hearing, presenting the key problems and discussing policy options and their possible impacts was held on 18 January 2013. The main results of the consultation process (2012-2013) can be summarised as follows:

- All stakeholders stressed the need for a stable and fair level playing field both for inter-port (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.
- 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.
- 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.
- 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.
- Port workers' trade unions extremely oppose any EU provision touching on the existing port labour regimes in certain 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.
- 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 in support of ports and maritime transport.

## **2.2 Impact assessment**

The Impact Assessment identified five operational objectives related to the two main challenges identified above.

### *2.2.1 Modernise port services and operations:*

First, by better optimising port services and operations, a number of TEN-T ports should be able to handle or attract more cargo and passengers with the existing infrastructure. This translates into three operational objectives:

(1) Clarify and facilitate access to the port services market:

This should reduce access restrictions to the port services market while clarifying and suppressing the current legal uncertainties stemming from horizontal rules from the Treaty and on public procurement.

(2) Prevent market abuse by designated port service providers:

This should ensure that designated service providers offer their services 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.

(3) Improve coordination mechanisms within ports:

This should facilitate smooth operations 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.

### *2.2.2 Create framework conditions to attract investments in ports:*

Second, a greater financial transparency and autonomy of ports should create a level playing field, encourage more efficient charging, and eventually attract more investments. This in turn translates in two additional operational objectives:

(4) Make the financial relations between public authorities, port authorities and providers of port services transparent:

This should ensure a financial transparency between public authority functions and commercial operations in order to prevent that ports and service providers benefit from unfair competitive advantages.

(5) Ensure autonomously set and transparent port infrastructure charges:

This should achieve a more efficient use of infrastructure and more economic rationality in the planning, investment, maintenance, and operation of port infrastructures, while enabling environmental and societal price signals.

On the basis of this 4 policy options where considered:

(1) Policy Package 1: “Transparency”

Policy Package 1 (PP1) applies a soft measure (non-binding communication) to clarify and facilitate the market access of ports services. Binding provisions are however introduced in monopolistic or oligopolistic situations: in those cases the services should be subject to price supervision in order to avoid excessive or discriminatory charging. The financing and setting

of port charges is left over to the competent authorities on the condition of basic transparency. Coordination of the services inside the port is guaranteed by a port users' committee.

(2) Policy Package 2: “Regulated competition”

Policy Package 2 (PP2) introduces the principle of freedom to provide services under a scheme of regulated market access. Under this regulated market access, the freedom to provide services can be restricted if it is warranted by the lack of space in the port area or by public service obligations (availability, accessibility, etc.). In such cases, newly attributed and designated services are made subject to a public tendering procedure and in the case of in-house operations, the service needs to remain confined. Services under a monopolistic or oligopolistic situation are subject to price supervision. The transparency of financial relations between public authorities, ports authorities and port service providers is accommodated by separated accounts and rules link the setting of the port infrastructure charges to actual costs. Coordination of the services inside the port is facilitated by a port users' committee.

(3) Policy Package 2a: “Regulated competition and port autonomy”

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

The obligation to have recourse to public tenders in case of space restrictions or public service obligations applies not only to new contracts but also in the event of substantial changes to existing contracts. The regulatory oversight of service providers in monopolistic position is more limited in scope: it only applies to the markets which can not be contested, i.e. the markets for which no public tender is organised. Greater autonomy is given to ports: on infrastructure charging, instead of imposing that charges are linked to actual costs, each port is given the right to set itself the structure and level of port dues, provided that the charging policy is transparent. The initiative also encourages a differentiation according to the environmental performance of ships.

(4) 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. There would also be a functional/legal separation. 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. As in PP2a each port authority would be free to determine the structure and level of infrastructure charges according to its own commercial practices.

After analysis of the different options and potential impact the Commission concluded that the best option should be PP2a with a variant for cargo handling and passenger services. As regards the measures related to the market access to cargo handling and passenger services, there is no need to propose new legal provisions. Existing rules and requirements will be clarified in a Communication. The rules on the regulatory oversight of the price of the service providers in monopolistic or oligopolistic position and on the transparency of accounts would however apply to cargo handling and passenger services.

The impact assessment highlights the potential benefits in terms of costs savings (€10 billion until 2030), development of short sea shipping and reduction of road congestion and creation of jobs. The impact assessment indicates that this proposal does not lead to direct significant changes of the administrative burden in ports. The introduction of the freedom to provide services will reduce the administrative cost for ports, while the supervision of prices in certain cases and the consultation of users may require new administrative efforts. However it should be stressed that this proposal will indirectly contribute to the simplification by lifting

restrictions. Further simplification efforts will also be proposed in the forthcoming initiative on the Blue Belt.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

#### **3.1 Summary of the measures proposed**

The proposal contains the following main elements:

- The Regulation applies to all the seaports identified in the Commission's proposal for Union Guidelines on the trans-European transport network.
- The freedom to provide services will be applicable to port services. However managing bodies of a port may impose minimum requirements on the providers of specific port services. When imposed, these requirements shall only relate to professional qualifications, the necessary equipment or maritime safety, general safety and security in the port and relevant environmental requirements. These requirements should not be used as a way of implicitly introducing market barriers and therefore the criteria should be objective and proportionate ensuring a fair treatment of all operators, existing and potential ones. Potential operators should have access to training to acquire relevant specific local knowledge.
- The above mentioned provision will not be imposed to cargo handling services and passengers terminals. These services are often organised by means of concession contracts falling in the scope of the future Directive on the award of concession contracts proposed by the Commission<sup>2</sup>. Moreover additional legal provisions could undermine efforts being made to initiate a Social Dialogue at Union level. Contrary to pilotage services to enter and exit ports, pilotage services performed in the deep sea have no direct impact on the efficiency of port and therefore do not need to be included in this Regulation.
- Where relevant the stated freedom to provide services could be subjected to a limitation of the number of service providers. This restriction should be based on two elements: either in the case of space constraints or reservation which if clearly documented in a formal port development plan can justify to limit the number of operators active in the port perimeter or in the case of a public service obligation imposed to an operator and for which the intention should be clear and publicly available.
- A Member State should have the possibility to designate authorities competent to impose public service obligation, in line with the applicable State aid rules. The obligations of public services must be clearly defined transparent, non-discriminatory and verifiable and must relate to the availability (no-interruption), the accessibility (to all users) or the affordability (of certain categories of users) of the port service.
- In the case of public service obligations being imposed by a competent authority in a port or in several ports such an authority will have the opportunity to organise and commercially exploit specific port services itself under the condition that its activity remains confined to the port or ports where it imposes public service obligations.

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<sup>2</sup> COM (2011)897 final

- Employees' rights should be safeguarded and the Member States should have the option to further strengthen these rights in the event of a transfer of undertakings and the relevant staff working for the old undertaking.
- In those case where managing bodies of the port benefit from public funds there shall be a transparent accounting in order to show the effective and appropriate use of these public funds.
- In those cases where designated port service providers have not been subject to an open public tendering procedure and in the case of internal operators, it should be ensured that the price for the service is transparent, non-discriminatory and that it is set according to normal market conditions, in particular in such way that the total charges do not exceed the total incurred costs and a reasonable profit.
- Managing bodies of the port shall define the port infrastructure charges in an autonomous way and according to its own commercial and investment strategy.
- The port infrastructure charges may be varied in accordance to commercial practices related to the frequent use of the port or in order to promote a more efficient use of the port infrastructure, short sea shipping or a high environmental performance, energy efficiency or carbon efficiency of transport operations.
- A port users' advisory committee shall be set up in every port. This committee will bring together representatives of operators of waterborne vessels, cargo owners or other port users which are requested to pay a port infrastructure charge or port service charge. This committee shall be consulted on the structure and the level of the port infrastructure charges and in certain cases the port service charges.
- The managing body of the port shall consult stakeholders such as undertakings established in the ports, providers of port services, and port users on issues like the coordination of port services, hinterland connections or administrative procedures.
- Member States shall ensure that an independent supervisory body monitors and supervises the application of this Regulation. It can be an existing body. The different national independent supervisory bodies shall exchange information about their work and decision-making principles and shall cooperate closely for the purpose of mutual assistance in their tasks.

### **3.2 Legal basis**

The legal basis for this proposal is Article 100 (2) of the Treaty on the Functioning of the European Union.

### **3.3 Subsidiarity principle**

Articles 58, 90 and 100 of the Treaty on the Functioning of the European Union extend to ports the objectives of a genuine internal market in the context of the Common Transport Policy.

The overwhelming share of seaborne trade handled in TEN-T ports results from trade between Member States or at international level. Ports have a clear European function. approximately one out of every two tonnes of volume handled in ports comes from or goes to, by sea or land, a Member State which is different from the one of the port in which the goods transit<sup>3</sup>. Actions by Member States alone cannot ensure a level playing field within the EU internal

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<sup>3</sup> Resulting from trade between Member States and trade between a Member State and a non-EU country through another Member State.

market, nor can they take actions to improve the performance of ports located on the same trans-European corridor but in other Member States.

Therefore, although the specific nature of the port sector and its long-lasting local history and culture is recognised, because of internal market reasons, network effects and the international dimension of the port sector, the proposed initiative is in line with the subsidiarity principle.

### **3.4 Proportionality principle**

The Regulation only covers TEN-T seaports. This will ensure proportionality insofar as it will avoid imposing unnecessary rules on very small ports which do not have a significant role for the European transport system. By contrast the TEN-T seaports deal with the overwhelming majority of the traffic and by definition are essential for the international and intra-European trade exchanges, and therefore for the European internal market, and/or the cohesion within the EU. Moreover TEN-T ports are eligible to EU funding.

The scope has not been further limited to the core ports in order not to risk creating distortions of competition between core ports and other TEN-T ports. Moreover an efficient functioning of the network requires both core ports (typically hub) and non-core TEN-T ports for the regional distribution.

### **3.5 Choice of instrument**

Whilst the Member States, regional and local public authorities have traditionally been the main actors involved in port infrastructure development and management this situation has been progressively changing. Transport operators, autonomous public bodies and entities and other private and public entities have also become key actors in the development, management and organisation of port. Therefore, it is important to ensure that this legislation on market access to port services and financial transparency of ports is generally applicable. Moreover, to ensure a uniform implementation, enforcement and a level playing field in the internal market, the legislation should be directly binding in its entirety. The Commission has therefore chosen a Regulation as the appropriate legal instrument for this proposal. This will also prevent additional administrative burden for Member States and the Commission.

### **3.6 European Economic Area**

The proposed Regulation concerns an EEA matter and should therefore extend to the European Economic Area.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing a framework on market access to port services and financial transparency of ports**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100 (2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>4</sup>,

Having regard to the opinion of the Committee of the Regions<sup>5</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The full integration of ports in seamless logistic and transport chains is needed to contribute to growth and a more efficient use and functioning of the trans-European transport network and the internal market. This requires modern port services contributing to an efficient use of ports and a climate favourable to investments to develop ports in line with current and future transport and logistics requirements.
- (2) In the Communication on the Single Market Act II Together for new growth<sup>6</sup>, the Commission has recalled that the attractiveness of maritime transport is dependent on the availability efficiency and reliability of port services and the necessity of addressing questions regarding the transparency of public funding and port charges, administrative simplification efforts in ports and reviewing restrictions on the provision of services at ports.
- (3) Facilitating access to the port services market at Union level and introducing the financial transparency and autonomy of seaports will improve the quality and efficiency of service provided to users of the port and contribute to a climate more favourable to investments in ports, and thereby help reduce costs for transport users and contribute to promoting short sea shipping and a better integration of maritime transport with rail, inland waterway and road transport.
- (4) The overwhelming majority of Union maritime traffic transits through the seaports of the trans-European transport network. In order to achieve the aim of this Regulation in

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<sup>4</sup> OJ C , , p. .

<sup>5</sup> OJ C , , p. .

<sup>6</sup> COM(2012) 573 final (3.10.2012)

a proportionate way without imposing any unnecessary burden on other ports, this Regulation should apply to the ports of the trans-European transport network, each of which playing a significant role for the European transport system either because it handles more than 0.1% of the total EU freight or the total number of passengers or because it improves the regional accessibility of island or peripheral areas, without prejudice, however, to the possibility of Member States deciding to apply this Regulation to other ports as well. Pilotage services performed in the deep sea do not have a direct impact on the efficiency of the ports as they are not used for the direct entry and exit of the ports and therefore do not need to be included in this Regulation.

- (5) The objective of Article 56 of the Treaty on the Functioning of the European Union is to eliminate restrictions on freedom to provide services in the Union. In accordance with Article 58 of the Treaty on the Functioning of the European Union should be achieved within the framework of the provisions of the Title relating to transport, more specifically Article 100 (2).
- (6) The self-provision of service which entails shipping companies or providers of port services to employ staff of their own choice and to provide themselves port services is regulated in a number of Member States for safety or social reasons. The stakeholders consulted by the Commission when preparing its proposal highlighted that imposing a generalised allowance of the self-provision of service at Union level would require additional rules on safety and social issues in order to avoid possible negative impacts in these areas. It appears therefore appropriate at this stage not to regulate this issue at Union level and to leave it to the Member States to regulate the self-provision of port services or not. Therefore, this Regulation should only cover the provision of port services for remuneration.
- (7) In the interest of efficient, safe and environmentally sound port management, the managing body of the port should be able to require that port service providers can demonstrate that they meet minimum requirements to perform the service in an appropriate way. These minimum requirements should be limited to a clearly defined set of conditions concerning the professional qualifications of the operators, including in terms of training, and the equipment required insofar as these requirements are transparent, non-discriminatory, objective and relevant for the provision of the port service.
- (8) Having the necessary equipment at his disposal should imply that the provider of the port service owns, rents or leases it and that in any case it has a direct and indisputable control of the equipment, in order to ensure that it can use such equipment whenever needed.
- (9) The procedure to grant with the right to provide port services when compliance with minimum requirements is required should be transparent, objective and non-discriminatory and should allow the providers of port services to start the provision of their port services in a timely manner.
- (10) Since ports are constituted of limited geographical areas, access to the market could, in certain cases, be subject to limitations relating to the scarcity of land or in case the land is reserved for certain type of activities in accordance with a formal development plan which plans in a transparent way the land use and with relevant national legislation such as those related to town and country planning objectives.
- (11) Any intention to limit the number of port service providers should be published in advance by the competent authority and should be fully justified, in order to give the

interested parties the opportunity to comment. The criteria for any limitation should be objective, transparent and non-discriminatory.

- (12) In order to be open and transparent, the procedure to select the providers of port services and its result should be made public and full documentation should be communicated to interested parties.
- (13) The selection procedure for providers of port service in the case the number of those providers is limited should follow the principles and approach determined in Directive .../... [concession]<sup>7</sup>, including the threshold and method for determining the value of the contracts as well as the definition of substantial modifications and the elements related to the duration of the contract.
- (14) The recourse to public service obligations leading to a limitation in the number of providers of a port service should only be justified for reasons of public interest in order to ensure the accessibility of the port service to all users, the availability of the port service all year long or the affordability of the port service to certain category of users.
- (15) Where there is a need to limit the number of port service providers, the decision on that limitation may be entrusted by the Member state to a different authority in order to safeguard competition. Any limitation in the number of providers of port services should follow a procedure which is open, transparent and non-discriminatory. This should however not be the case when public service obligations are to be entrusted directly to a competent authority or an internal operator.
- (16) This Regulation does not preclude the possibility of competent authorities to grant compensation for the accomplishment of the public service obligations provided that it complies with the applicable State aid rules. Where public service obligations qualify as SGEI compliance should be ensured with Commission Decision of 20 November 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest<sup>8</sup>, Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest<sup>9</sup> and the European Union framework for State aid in the form of public service compensation<sup>10</sup>.
- (17) The managing body of the port should not discriminate between providers of port services, in particular in favour of an undertaking or body in which it holds an interest.
- (18) The competent authorities designated in a Member State should have the choice to decide to provide port services with public service obligations themselves or to entrust directly the provision of such services directly to an internal operator. In the case that a competent authority decides to provide the service itself, this may cover the provision of services through agents employed by the competent authority or commissioned by the competent authority. When such limitation is applied in all the TEN-T ports in the territory of a Member State, the Commission should be informed. In the cases where

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<sup>7</sup> Proposal for a Directive on the award of concession contracts (COM 2011) 897 final

<sup>8</sup> OJ L 7, 11.1.2012, p. 3.

<sup>9</sup> OJ L 114, 26.4.2012, p.8.

<sup>10</sup> OJ C 8, 11.01.2012

the competent authorities in a Member State prevail on such a choice, the provision of port services by the internal operators should be confined only to the port or ports for which those internal operators were designated. Moreover, in such cases, the port service charges applied by such an operator should be subject to supervision by the independent supervisory body.

- (19) Member States should retain the power to ensure an adequate level of social protection for the staff of undertaking providing port services. This Regulation shall not affect the application of the social and labour rules of the Member States. In cases of limitation of the number of port service providers, where the conclusion of a port service contract may entail a change of port service operator, it should be possible for the competent authorities to ask the chosen service operator to apply the provisions of Council Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses<sup>11</sup>.
- (20) In many ports, the market access for providers of cargo-handling and terminal passenger services is granted by means of public concession contracts. This type of contracts will be covered by the Directive .../...[concessions]. Consequently, Chapter II of this Regulation should not apply to the provision of cargo-handling and passenger services, but Member States should remain free to decide to apply nevertheless the rules of this Chapter to these two services. For other types of contracts used by public authorities for granting market access to cargo handling and terminal passenger services, the Court of Justice of the European Union has confirmed that the competent authorities are bound by the principles of transparency and non-discrimination when concluding these contracts. These principles are fully applicable as regards the provision of any port service.
- (21) Financial relations between seaports which receive public funds and providers of port services on the one hand, and public authorities on the other should be made transparent in order to ensure a level playing field and to avoid market distortions. In this respect, this Regulation extends to other categories of addressees the principles of transparency of financial relations as set out in Commission Directive 2006/111/EC on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings<sup>12</sup> without prejudice to its scope.
- (22) It is necessary to impose on the managing body of the port which receives public funds, when it is also acting as a service provider, an obligation to keep separate accounts for activities carried out in their capacity as managing body of the port from those carried out on a competitive basis in order to ensure a level playing field, transparency in the allocation and use of public funds and to avoid market distortions. In any case compliance with the State aid rules should be ensured.
- (23) Port service charges applied by providers of port services which are not designated in accordance with an open, transparent and non-discriminatory procedure entail a higher risk of price abuse given their monopolistic or oligopolistic situation and the fact that their market cannot be contested. The same is true for charges levied by internal operators in the meaning of this Regulation. For those services, in the absence of fair market mechanisms, arrangements should be established to ensure that the charges

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<sup>11</sup> OJ L 82, 22.3.2001, p. 16.

<sup>12</sup> OJ L 318, 17.11.2006, p.17.

they levy reflect the normal conditions of the relevant market and are set in a transparent and non-discriminatory way.

- (24) In order to be efficient, the port infrastructure charges of each individual port should be set in a transparent and autonomous way in accordance with that port's own commercial and investment strategy.
- (25) The variation of port infrastructure charges should be allowed in order to promote short sea shipping and to attract waterborne vessels having an environmental performance or energy and carbon efficiency of the transport operations, notably the off-shore or on-shore maritime transport operations, that is better than average. This should help to contribute to the environmental and climate change policies and the sustainable development of the port and its surroundings notably by contributing to reducing the environmental footprint of the waterborne vessels calling and staying in the port.
- (26) Adequate facilities should be in place to ensure that the users of the ports which are requested to pay a port infrastructure charge and/or a port service charge are regularly consulted when the port infrastructure charge and the port service charge are defined and changed. The managing bodies of the ports should also regularly consult other stakeholders on key issues related to the sound development of the port, its performance and its capacity to attract and generate economic activities such as the coordination of port services within the port area and the efficiency of the connections with the hinterland and of the administrative procedures in ports.
- (27) In order to ensure the proper and effective application of this Regulation, an independent supervisory body, which could be an already existing body, should be designated in every Member State.
- (28) The different independent supervisory bodies should exchange information on their work and cooperate in order to ensure a uniform application of this Regulation.
- (29) In order to supplement and amend certain non-essential elements of this Regulation and in particular to promote the uniform application of environmental charging, reinforce the Union-wide coherence of environmental charging and to ensure common charging principles in relation to the promotion of short sea shipping, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of common classifications of vessels, fuels and types of operations according to which to vary the infrastructure charges and common charging principles for port infrastructure charges. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.
- (30) In order to ensure uniform conditions for the implementation of this Regulation implementing powers relating to appropriate arrangements for the exchange of information between independent supervisory bodies should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011

laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers<sup>13</sup>.

- (31) Since the objectives of this Regulation, namely ensuring the modernisation of port services and the appropriate framework to attract necessary investments in all the ports of the trans-European transport network, cannot be sufficiently achieved by the Member States because of the European dimension, international and cross-border nature of port and related maritime business and can therefore, by reason of the need for a European level playing field, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (32) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

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<sup>13</sup> OJ L 55, 28.2.2011, p. 13.

HAVE ADOPTED THIS REGULATION:

## **CHAPTER I – Subject matter, scope and definitions**

### *Article 1*

#### **Subject matter and scope**

1. This Regulation establishes:
  - (a) a clear framework for access to the market of port services;
  - (b) common rules on the financial transparency and charges to be applied by managing bodies or providers of port services.
2. This Regulation shall apply to the provision of the following categories of port services, either inside the port area or on the waterway access to and from the ports.
  - (a) bunkering
  - (b) cargo handling;
  - (c) dredging;
  - (d) mooring;
  - (e) passenger services;
  - (f) port reception facilities;
  - (g) pilotage and;
  - (h) towage.
3. This Regulation shall apply to all seaports of the trans-European transport network, as defined in Annex I of Regulation XXX [regulation on the TEN-T Guidelines].
4. Member States may also apply this Regulation to other seaports. When Member States decide to apply this Regulation to other seaports they shall notify their Decision to the Commission.

### *Article 2*

#### **Definitions**

For the purpose of this Regulation:

1. "bunkering" means the provision of solid, liquid or gaseous fuel or any other energy source used for the propulsion of the waterborne vessel as well as for general and specific energy provision on board of the waterborne vessel whilst at berth;
2. "cargo handling services" means the organisation and handling of cargo between the carrying waterborne vessel and the shore be it for import, export or transit of the cargo, including the processing, transporting and temporary storage of the cargo on the relevant cargo handling terminal and directly related to the transporting of the cargo, but excluding warehousing, stripping, repackaging or any other value added services related to the handled cargo;
3. "dredging" means the removal of sand, sediment or other substances from the bottom of the waterway access to a port in order to allow waterborne vessel to have access to the port and comprises both the initial removal (capital dredging) and the maintenance dredging in order to keep the waterway accessible;

4. "essential port facility" means a facility of which the access is indispensable to perform a port service and which cannot be replicated under normal market conditions;
5. "managing body of the port" means any public or private body which, whether or not in conjunction with other activities, has as its objective under national law or instruments the administration and management of the port infrastructures, port traffic, the coordination and, where appropriate, the control of the activities of the operators present in the port concerned;
6. "mooring" means the berthing and un-berthing services required for a waterborne vessel being anchored or otherwise fastened to the shore in the port or in the waterways access to the port;
7. "passenger services" means the organisation and handling of passengers between the carrying waterborne vessel and the shore and also includes the processing of personal data and transporting the passengers inside the relevant passenger terminal;
8. "pilotage" means the guidance service of a waterborne vessel by a pilot or a pilotage station in order to allow for a safe entry or exit of the vessel in the waterways access to the port;
9. "port infrastructure charge" means a fee collected for the direct or indirect benefit of the managing body of the port and paid by the operators of waterborne vessels or cargo owners for the use of facilities and services that allow vessels entry and exit in and out of the port, including the waterways giving access to those ports, as well as access to the processing of passengers and cargo;
10. "port reception facility" means any facility, which is fixed, floating or mobile and capable of receiving ship-generated waste or cargo residues as defined in Directive 2000/59/EC of the European Parliament and of the Council on port reception facilities for ship-generated waste and cargo residues<sup>14</sup>;
11. "port service charge" means a fee collected for the benefit of the provider of port services and paid by the users of the relevant service;
12. "port service contract" means a formal and legally binding agreement between a provider of port service and a competent authority whereby this body designates a provider of port service to provide port services following a procedure to limit the number of providers of port services;
13. "provider of port services" means any natural or legal person providing, or wishing to provide, for remuneration, one or more categories of port services listed in Article 1(2);
14. "public service obligation" means a requirement defined or determined in order to ensure the provision of those port services in the general interest that an operator, if it were considering its own commercial interests, would not assume or would not assume to the same extent or under the same conditions;
15. "short sea shipping" means the movement of cargo and passengers by sea between ports situated in geographical Europe or between those ports and ports situated in non-European countries having a coastline on the enclosed seas bordering Europe;

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<sup>14</sup> OJ L 332, 28.12.2000, p.81-90.

16. "seaport" means an area of land and water made up of such works and equipment so as to permit, principally, the reception of ships, their loading and unloading, the storage of goods, the receipt and delivery of these goods and the embarkation and disembarkation of passengers; and any other infrastructure necessary for transport operators within the port area;
17. "towage" means the assistance to a waterborne vessel by means of a tug in order to allow for a safe entry or exit of the port by providing assistance to the manoeuvring of the waterborne vessel;
18. "waterway access to a port" means water access to the port from the open sea, such as port approaches, fairways, rivers, sea canals and fjords.

## **CHAPTER II – Market access**

### *Article 3*

#### **Freedom to provide services**

1. Freedom to provide services in seaports covered by this Regulation shall apply to the providers of port services established in the Union under the conditions set out in this Chapter.
2. Providers of port services shall have access to essential port facilities to the extent necessary for them to carry out their activities. The terms of the access shall be fair, reasonable and non-discriminatory.

### *Article 4*

#### **Minimum requirements for the provision of port services**

1. The managing body of the port may require that providers of port services comply with minimum requirements to perform the corresponding port service.
2. The minimum requirements provided for in paragraph 1 may only relate, where applicable, to:
  - (a) the professional qualifications of the port service provider, its personnel or the natural persons who effectively and continuously are managing the activities of the port service provider;
  - (b) the equipment needed to provide the relevant port service in normal and safe conditions and the capacity to maintain this equipment at the appropriate level;
  - (c) the compliance with requirements on the maritime safety or the safety and security of the port or access to it, its installations, equipment and persons;
  - (d) the compliance with local, national, Union and international environmental requirements.
3. The minimum requirements shall be transparent, non-discriminatory, objective and relevant to the category and nature of port services concerned.
4. Where the minimum requirements include specific local knowledge or acquaints with local conditions, the managing body of the port shall ensure that adequate access to relevant training exists, under transparent and non-discriminatory conditions, unless adequate access to such training is ensured by the Member State.
5. In the cases provided for in paragraph 1, the minimum requirements referred to in paragraph 2 and the procedure for the granting of the right to provide port services

under those requirements shall have been published by the managing body of the port by 1 July 2015 or for minimum requirements being applicable after that date at least three months before the date on which those requirements would become applicable. Providers of port services shall be informed in advance of any change in the criteria and of the procedure.

#### *Article 5*

##### **Procedure to ensure compliance with the minimum requirements**

1. The managing body of the port shall treat providers of port services equally and shall act in a transparent manner.
2. The managing body of the port shall grant or refuse the right to provide port services on the basis of the minimum requirements established in accordance with Article 4 within one month from receiving a request for the granting of such a right. Any refusal shall be duly justified on the basis of objective, transparent, non-discriminatory and proportionate criteria.
3. Any limit in the duration of the decision issued in accordance with paragraph 2 may be justified only on grounds related to the type and nature of the port service.

#### *Article 6*

##### **Limitations of the number of providers of port services**

1. By way of derogation from Article 3, the managing body of the port may limit the number of providers of port service for a given port service for one or several of the following reasons:
  - (a) the scarcity or reserved use of land provided that the managing body can demonstrate that the land constitutes an essential port facility to provide the port service and that the limitation is in accordance with the formal development plan of the port as agreed by the management body of the port and where appropriate any other public competent authorities according to the national legislation;
  - (b) the public service obligations as provided for in Article 8, insofar as the absence of limitation can obstruct the performance of the obligations assigned to the providers of port services.
2. The managing body of the port shall publish any proposal to apply paragraph 1 at least six months in advance together with the grounds justifying it, giving any interested party the opportunity to comment within a reasonable period.
3. The managing body of the port shall publish the adopted decision.
4. When a managing body of a port provides port services itself or through a legally distinct entity which it directly or indirectly controls, the Member State may entrust the adoption of the decision limiting the number of providers of port services to an authority which is independent from the managing body of the port. If the Member State does not entrust the adoption of the decision limiting the number of providers of port services to such an authority, the number of providers shall not be less than two.

## Article 7

### **Procedure for the limitation of the number of providers of port services**

1. Any limitation of the number of providers for a port service in accordance with Article 6 shall follow a selection procedure which shall be open to all interested parties, non-discriminatory and transparent.
2. If the estimated value of the port service exceeds the threshold defined in paragraph 3, the rules on the award procedure, the procedural guarantees and the maximum duration of the concessions as set out in Directive .../... [concession] shall apply.
3. The threshold and the method to determine the value of the port service shall be those of the relevant and applicable provisions of Directive .../... [concession].
4. The selected provider or providers and the managing body of the port shall conclude a port service contract.
5. For the purposes of this Regulation, a substantial modification within the meaning of Directive .../... [concession] of the provisions of a port service contract during its term shall be considered as a new port service contract and shall require a new procedure as referred to in paragraph 2.
6. Paragraphs 1 to 5 of this Article shall not apply in the cases referred to in Article 9.
7. This Regulation is without prejudice to Directive .../... [concession]<sup>15</sup>, Directive .../...[public utilities]<sup>16</sup> and Directive .../... [public procurement]<sup>17</sup>

## Article 8

### **Public service obligations**

1. Member States may decide to impose public service obligations related to port services on providers in order to ensure the following:
  - (a) the availability of the service without interruption during the day, the night, the week and the year;
  - (b) the availability of the service to all users;
  - (c) the affordability of the service for certain categories of users.
2. The obligations referred to in paragraph 1 shall be clearly defined, transparent, non-discriminatory, verifiable and shall guarantee equality of access to all port service providers established in the Union.
3. The Member States shall designate the competent authorities within their territory to impose such public service obligations. The managing body of the port may be the competent authority.
4. When the competent authority designated in accordance with paragraph 3 is different from the managing body of the port, that competent authority shall exercise the powers provided for in Articles 6 and 7 concerning the limitation of the number of providers of port services based on public service obligations.

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<sup>15</sup> Proposal for a Directive on the award of concession contracts (COM 2011) 897 final

<sup>16</sup> Proposal for a Directive on procurement by entities operating in the water, energy, transport and postal services sectors (COM/2011/0895 final)

<sup>17</sup> Proposal for a Directive on public procurement (COM/2011/0896 final)

5. If a competent authority decides to impose public service obligations in all the seaports covered by this Regulation in a Member State, it shall notify these obligations to the Commission.
6. In the event of a disruption of port services for which public service obligations are imposed or when an immediate risk of such a situation occurs, the competent authority may take an emergency measure. The emergency measure may take the form of a direct award so as to attribute the service to a different provider for a period up to one year. During that time period, the competent authority shall either launch a new procedure to select a provider of port service in accordance with Article 7 or shall apply Article 9.

#### *Article 9*

#### **Internal operator**

1. In the cases provided for in Article 6 (1) (b), the competent authority may decide to provide a port service under public service obligations itself or to impose such obligations directly on a legally distinct entity over which it exercises a control similar to that exercised over its own departments. In such a case, the port service provider shall be considered as an internal operator for the purpose of this Regulation.
2. The competent authority shall be considered as exercising a control of a legally distinct entity similar to that exercised to its own departments only if it exercises a decisive influence over both the strategic objectives and the significant decisions of the controlled legal entity.
3. The internal operator shall be confined to perform the assigned port service only in the port(s) for which the assignment to provide the port service has been attributed to him.
4. If a competent authority decides to apply paragraph 1 in all the seaports covered by this Regulation in a Member State, it shall inform the Commission.
5. This Article is without prejudice to Directive .../...[concession].

#### *Article 10*

#### **Safeguarding of employees' rights**

1. This Regulation shall not affect the application of the social and labour rules of the Member States.
2. Without prejudice to national and Union law including collective agreements between social partners, the managing bodies of the port may require the designated provider of port services appointed in accordance with the procedure established by Article 7, in the case where this provider is different from the incumbent provider of port services, to grant staff previously taken on by the incumbent provider of port services the rights to which they would have been entitled if there had been a transfer within the meaning of Directive 2001/23/EC.
3. Where managing bodies of the port require providers of port services to comply with certain social standards as regards the provision of relevant port services, tender documents and port service contracts shall list the staff concerned and give transparent details of their contractual rights and the conditions under which employees are deemed to be linked to the port services.

*Article 11*  
**Exemption**

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

## **CHAPTER III – Financial transparency and autonomy**

*Article 12*  
**Transparency of financial relations**

1. The financial relations between public authorities and a managing body of the port that receives public funds shall be reflected in a transparent way in the accounts in order to clearly show the following:
  - (a) public funds made available directly by public authorities to the managing bodies of the port concerned;
  - (b) public funds made available by public authorities through the intermediary of public undertakings or public financial institutions; and
  - (c) the use which these public funds have been attributed for.
2. Where the managing body of the port that receives public funds provides port services itself, it shall keep the accounts of each port service activity separate from the accounts of its other activities, in such a way that :
  - (a) all costs and revenues are correctly assigned or allocated on the basis of consistently applied and objectively justifiable cost accounting principles; and
  - (b) the cost accounting principles according to which separate accounts are maintained are clearly established.
3. The public funds referred to in paragraph 1 shall include share capital or quasi-capital funds, non-refundable grants, grants only refundable in certain circumstances, award of loans including overdrafts and advances on capital injections, guarantees given to the managing body of the port by public authorities, dividends paid out and profits retained or any other form of public financial support.
4. The managing body of the port shall keep the information concerning the financial relations as referred to in paragraphs 1 and 2 of this Article at the disposal of the Commission and of the competent independent supervisory body as referred to in Article 17 for five years from the end of the fiscal year to which the information refers.
5. The managing body of the port shall make available to the Commission and the competent independent supervisory body, upon request, any additional information that they deem necessary in order to complete a thorough appraisal of the data submitted and to assess compliance with this Regulation. The information shall be transmitted within two months from the date of the request.
6. Managing bodies of the port that have not received public funds in previous accounting years but which start benefitting from public funds shall apply paragraphs 1 and 2 from the accounting year following the transfer of the public funds
7. Where public funds are paid as a compensation for a public service obligation, they shall be shown separately in the relevant accounts and may not be transferred to any other service or business activity.

### *Article 13*

#### **Port service charges**

1. The charges for the services provided by an internal operator as referred to in Article 9 and the charges levied by providers of port service, in cases of limitation of the number of providers which have not been designated on the basis of procedures which are open, transparent and non-discriminatory, shall be set in a transparent and non-discriminatory way. These charges shall reflect the conditions on a competitive relevant market and shall not be disproportionate to the economic value of the service provided.
2. The payment of the port service charges may be integrated in other payments, such as the payment of the port infrastructure charges. In this case, the provider of port service and, where appropriate, the managing body of the port shall make sure that the amount of the port service charge remains easily identifiable by the user of the port service.
3. The port service provider shall make available to the competent independent supervisory body as referred to in Article 17, upon request, information on the elements serving as a basis to determine the structure and the level of the port service charges that falls under the application of paragraph 1 of this Article. This information shall include the methodology used for setting the port charges with regard to the facilities and services to which these port service charges relate to.

### *Article 14*

#### **Port infrastructure charges**

1. The managing body of the port shall levy a port infrastructure charge. This shall not prevent providers of port services which are using port infrastructures from levying port service charges.
2. The payment of the port infrastructure charges may be integrated in other payments, such as the payment of the port service charges. In this case, the managing body of the port shall make sure that the amount of the port infrastructure charge remains easily identifiable by the user of the port infrastructure.
3. In order to contribute to an efficient infrastructure charging system, the structure and the level of port infrastructure charges shall be defined in an autonomous way by the managing body of the port according to its own commercial strategy and investment plan reflecting competitive conditions of the relevant market and in accordance with State aid rules.
4. Without prejudice to paragraph 3, port infrastructure charges may vary in accordance with commercial practices related to frequent users, or in order to promote a more efficient use of the port infrastructure, short sea shipping or a high environmental performance, energy efficiency or carbon efficiency of transport operations. The criteria used for such a variation shall be relevant, objective, transparent and non-discriminatory and in due respect of the competition rules. The resulting variation shall in particular be available to all relevant port service users on equal terms.
5. The Commission shall be empowered to adopt, where necessary, delegated acts in accordance with the procedure referred to in Article 21 concerning common classifications of vessels, fuels and types of operations according to which the infrastructure charges can vary and common charging principles for port infrastructure charges.

6. The managing body of the port shall inform port users and the representatives or associations of port users about the structure and the criteria used to determine the amount of the port infrastructure charges, including the total costs and revenues serving as a basis to determine the structure and the level of the port infrastructure charges. It shall inform users of the port infrastructures of any changes in the amount of the port infrastructure charges or in the structure or criteria used in order to determine such charges at least three months in advance.
7. The managing body of the port shall make available to the competent independent supervisory body and to the Commission, upon request, the information referred to in paragraph 4 and the detailed costs and revenues, serving as a basis to determine the structure and the level of the port infrastructure charges and the methodology used for setting the port infrastructure charges with regard to the facilities and services to which these port charges relate to.

## ***CHAPTER IV – General and final provisions***

### *Article 15*

#### **Consultation of port users**

1. The managing body of the port shall establish a committee of representatives of operators of waterborne vessels, cargo owners or other port users which are requested to pay an infrastructure charge or a port service charge or both. This committee shall be called the "port users' advisory committee".
2. The managing body of the port shall consult on an annual basis prior to the setting of port infrastructure charges the port users' advisory committee on the structure and level of such charges. The providers of port services as referred to in Article 6 and in Article 9 shall consult on an annual basis prior to the setting of port service charges the port users' advisory committee on the structure and level of such charges. The managing body of the port shall provide adequate facilities for such consultation and shall be informed of the results of the consultation by the providers of port services.

### *Article 16*

#### **Consultation of other stakeholders**

1. The managing body of the port shall regularly consult stakeholders such as undertakings established in the port, providers of port services, operators of waterborne vessels, cargo owners, land transport operators and public administrations operating in the port area on the following:
  - (a) the proper coordination of port services within the port area;
  - (b) measures to improve the connections with the hinterland and where appropriate measures to develop and improve the efficiency of rail and inland waterways connections;
  - (c) the efficiency of the administrative procedures in port and where appropriate possible measures to simplify them.

### *Article 17*

#### **Independent supervisory body**

1. Member States shall ensure that an independent supervisory body monitors and supervises the application of this Regulation in all the seaports covered by this Regulation on the territory of each Member State.
2. The independent supervisory body shall be legally distinct from and functionally independent of any managing body of the port or providers of port services. Member States that retain ownership or control of ports or port managing bodies shall ensure an effective structural separation between the functions relating to the supervision and monitoring of this Regulation and the activities associated with that ownership or control. The independent supervisory body shall exercise its powers impartially and transparently and with due respect to the right to freely conduct business.
3. The independent supervisory body shall handle the complaints lodged by any party with a legitimate interest and the disputes brought before it arising in connection with the application of this Regulation.
4. In the event that the dispute arises between parties established in different Member States, the independent supervisory body of the Member State of the port where the dispute is presumed to have its origin shall have competence to solve the dispute.
5. The independent supervisory body shall have the right to require managing bodies of the ports, providers of port services and port users to submit information needed to ensure monitoring and supervision of the application of this Regulation.
6. The independent supervisory body may issue opinions at the request of a competent authority in the Member State on any issues in relation to the application of this Regulation.
7. The independent supervisory body may consult the port users' advisory committee of the port concerned when dealing with the complaints or disputes.
8. The decisions of the independent supervisory body shall have binding effects, without prejudice to judicial review.
9. Member States shall notify to the Commission the identity of the independent supervisory bodies by 1 July 2015 at the latest and subsequently any modification thereof. The Commission shall publish and update the list of the independent supervisory bodies on its website.

### *Article 18*

#### **Cooperation between independent supervisory bodies**

1. The independent supervisory bodies shall exchange information about their work and decision-making principles and practices in order to facilitate a uniform implementation of this Regulation. For this purpose, they shall participate and work together in a network that convenes at regular intervals and at least once a year. The Commission shall participate, coordinate and support the work of the network.
2. The independent supervisory bodies shall cooperate closely for the purposes of mutual assistance in their tasks, including in carrying out investigations required to handle complaints and disputes in cases involving ports in different Member States. For this purpose, an independent supervisory body shall make available to another

such body, after a substantiated request, the information necessary to allow that body to fulfil its responsibilities under this Regulation.

3. The Member States shall ensure that the independent supervisory bodies shall provide the Commission, after a reasoned request, with the information necessary for it to carry its tasks. The information requested by the Commission shall be proportionate to the performance of those tasks.
4. Where information is considered confidential by the independent supervisory body in accordance with Union or national rules on business confidentiality, the other national supervisory body and the Commission shall ensure such confidentiality. This information may only be used for the purpose which it was requested.
5. Based on the experience of the independent supervisory bodies and on the activities of the network referred to in paragraph 1, and in order to ensure efficient cooperation, the Commission may adopt common principles on the appropriate arrangements for the exchange of information between independent supervisory bodies. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22(2).

#### *Article 19*

##### *Appeals*

1. Any party with a legitimate interest shall have the right to appeal against the decisions or individual measures taken under this Regulation by the competent authorities, by the managing body of the port or by the independent supervisory body to an appeal body which is independent of the parties involved. This appeal body may be a court.
2. Where the appeal body referred in paragraph 1 is not judicial in character, it shall give reasons in writing for its decisions. Its decisions shall also be subject to review by a national court.

#### *Article 20*

##### *Penalties*

Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by 1 July 2015 at the latest and shall notify it without delay of any subsequent amendment affecting them.

#### *Article 21*

##### *Exercise of the delegation*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 14 shall be conferred on the Commission for an indeterminate period of time.
3. The delegation of power referred to in Article 14 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European*

*Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 14 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

#### *Article 22*

##### **Committee procedure**

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

#### *Article 23*

##### **Report**

No later than three years after the entry into force of this Regulation, the Commission shall present a report to the European Parliament and the Council on the functioning and effect of this Regulation, accompanied, if appropriate, by relevant proposals.

#### *Article 24*

##### **Transitional measures**

1. Port service contracts concluded before [date of adoption of the Regulation] which were entrusted to selected providers of port services based on an open, transparent and non-discriminatory procedure or are otherwise in conformity with the rules of this Regulation shall continue to be valid until their expiry.
2. Port service contracts concluded before [date of adoption of the Regulation] which do not meet the conditions provided in paragraph 1 shall remain valid until they expire but not after 1 July 2025.

#### *Article 25*

##### **Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply with effect from 1 July 2015.

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

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*