















# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	2013/0157(COD) Procedure completed
Provision of port services and financial transparency of ports Amended by <a href="#">2020/0067(COD)</a>	
Subject 2.40 Free movement of services, freedom to provide 2.40.02 Public services, of general interest, universal service 2.80 Cooperation between administrations 3.20.03 Maritime transport: passengers and freight 3.20.09 Ports policy	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 TRAN Transport and Tourism	 <a href="#">FLECKENSTEIN Knut</a>	16/07/2014
		Shadow rapporteur	
		 <a href="#">VOZEMBERG-VRIONIDI Elissavet</a>	
		 <a href="#">VAN DALEN Peter</a>	
		 <a href="#">MEISSNER Gesine</a>	
		 <a href="#">TAYLOR Keith</a>	
		 <a href="#">D'AMATO Rosa</a>	
	Former committee responsible		
	 TRAN Transport and Tourism		
Committee for opinion	Rapporteur for opinion	Appointed	
 ECON Economic and Monetary Affairs	The committee decided not to give an opinion.		
 EMPL Employment and Social Affairs			
 IMCO Internal Market and Consumer Protection	The committee decided not to give an opinion.		
 REGI Regional Development	The committee decided not to give an opinion.		
Former committee for opinion			
 ECON Economic and Monetary Affairs			
 EMPL Employment and Social Affairs			

**IMCO** Internal Market and Consumer Protection

**REGI** Regional Development

Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Agriculture and Fisheries</a>	<a href="#">3514</a>	23/01/2017
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">3335</a>	08/10/2014
European Commission	Commission DG	Commissioner	
	<a href="#">Mobility and Transport</a>	KALLAS Siim	
European Economic and Social Committee			
European Committee of the Regions			

## Key events

23/05/2013	Legislative proposal published	COM(2013)0296	Summary
10/06/2013	Committee referral announced in Parliament, 1st reading		
05/06/2014	Debate in Council	<a href="#">3318</a>	Summary
08/10/2014	Debate in Council	<a href="#">3335</a>	
20/10/2014	Committee referral announced in Parliament, 1st reading		
25/01/2016	Vote in committee, 1st reading		
17/02/2016	Committee report tabled for plenary, 1st reading	<a href="#">A8-0023/2016</a>	
07/03/2016	Debate in Parliament		
08/03/2016	Results of vote in Parliament		
08/03/2016	Decision by Parliament, 1st reading	<a href="#">T8-0069/2016</a>	Summary
08/03/2016	Matter referred back to the committee responsible		
11/10/2016	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	<a href="#">PE610.787</a> <a href="#">GEDA/A/(2016)010793</a>	
12/12/2016	Debate in Parliament		
14/12/2016	Decision by Parliament, 1st reading	<a href="#">T8-0499/2016</a>	Summary
23/01/2017	Act adopted by Council after Parliament's 1st reading		
23/01/2017	End of procedure in Parliament		
15/02/2017	Final act signed		
03/03/2017	Final act published in Official Journal		

Technical information	
Procedure reference	2013/0157(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
	Amended by <a href="#">2020/0067(COD)</a>
Legal basis	Treaty on the Functioning of the EU TFEU 100-p2; Rules of Procedure EP 61
Mandatory consultation of other institutions	<a href="#">European Economic and Social Committee</a> <a href="#">European Committee of the Regions</a>
Stage reached in procedure	Procedure completed
Committee dossier	TRAN/8/00167

Documentation gateway					
Legislative proposal		<a href="#">COM(2013)0296</a>	23/05/2013	EC	Summary
Document attached to the procedure		<a href="#">COM(2013)0295</a>	23/05/2013	EC	Summary
Document attached to the procedure		<a href="#">SWD(2013)0181</a>	23/05/2013	EC	
Document attached to the procedure		<a href="#">SWD(2013)0182</a>	23/05/2013	EC	
Document attached to the procedure		<a href="#">SWD(2013)0183</a>	23/05/2013	EC	
Economic and Social Committee: opinion, report		<a href="#">CES4030/2013</a>	11/07/2013	ESC	
Committee of the Regions: opinion		<a href="#">CDR3610/2013</a>	28/11/2013	CofR	
Committee draft report		<a href="#">PE557.153</a>	13/05/2015	EP	
Amendments tabled in committee		<a href="#">PE557.328</a>	02/07/2015	EP	
Amendments tabled in committee		<a href="#">PE560.894</a>	10/07/2015	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A8-0023/2016</a>	17/02/2016	EP	
Text adopted by Parliament, partial vote at 1st reading/single reading		<a href="#">T8-0069/2016</a>	08/03/2016	EP	Summary
Coreper letter confirming interinstitutional agreement		<a href="#">GEDA/A/(2016)010793</a>	05/10/2016	CSL	
Text agreed during interinstitutional negotiations		<a href="#">PE610.787</a>	05/10/2016	EP	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T8-0499/2016</a>	14/12/2016	EP	Summary
Draft final act		<a href="#">00041/2016/LEX</a>	15/02/2017	CSL	
Commission response to text adopted in plenary		<a href="#">SP(2017)131</a>	08/03/2017	EC	

Additional information	
Research document	<a href="#">Briefing</a>
National parliaments	<a href="#">IPEX</a>
European Commission	<a href="#">EUR-Lex</a>

## Provision of port services and financial transparency of ports

This communication reviews European Ports Policy and builds on the progress achieved. It accompanies and supplements a 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. This revised European Ports Policy covers the trans-European transport network seaports, which account for 96% of freight and 93% of passengers transiting through ports in the Union.

According to the Commission, ports can contribute significantly to the economic recovery and long term competitiveness of European industries in world markets while adding value and jobs in all EU coastal regions. Ports will have a key role to play in the development of an efficient and sustainable trans-European network by diversifying transport choices and contributing to multimodal transport.

Nevertheless, today, European Ports Policy finds itself at a crossroads. While some European ports perform well, structural problems regarding the insufficient connectivity to the hinterland, the lack of transparency in the use of public funds, market entry barriers, outdated governance models and excessive bureaucracy affect the performance of many other ports.

With a view to addressing these long-standing problems, the communication identifies a set of EU actions needed to further unlock the potential of ports.

### 1. Connect ports to the trans-European network:

- in the governance of corridors which will be set-up in the framework of guidelines for the development of the TEN-T, ports will be encouraged to act as enablers of inter-modality;
- in partnership with the Member States, the Commission will strengthen the alignment of transport projects funded under the Structural and Cohesion Funds with the TEN-T, promoting priority to projects concerning port access and hinterland connections.

### 2. Modernise port services:

- for cargo-handling and passenger terminal concessions, the Commission will ensure that the [horizontal Directives on Concessions](#) (soon to be adopted) and Public Contracts are effectively applied;
- the [future Regulation](#) on the access of third-country goods and services to the Unions internal market in public procurement proposed by the Commission in 2012 will be used as a lever to facilitate the negotiation of reciprocal access to non-EU markets for EU-based global players;
- the Regulation proposed in parallel to this Communication introduces common rules to ensure supervision by an independent authority of the port service charges levied by operators which have exclusive rights and which have not been designated through a procedure which is transparent and non-discriminatory;
- the Commission will present new initiatives aiming to further simplify administrative procedures in ports, in particular customs procedures; initiatives such as the Blue Belt, the e-maritime initiative and e-freight should be further developed or complemented.

### 3. Attract investment to ports:

- action will focus on the transparency of public funding in ports, the clarification of state aid rules, and the increase efficiency of port infrastructure charges,
- it is also necessary to enhance cooperation with neighbouring countries, in order to achieve a sustainable transport system benefiting all EU partners based on the core principles of fair competition, transparent use of public funds and fiscal instruments and respect of social and environmental standards.

### 4. Promote Social Dialogue:

- the Commission will facilitate the Social Dialogue at Union level by providing technical and administrative support, and a review will be carried out in 2016 that will assess the functioning and progress of the European Social Dialogue for the ports sector ;
- under the 7th RTD framework programme for transport, the Commission will launch before the end of 2013 a concerted action project to examine health and safety, training and qualification challenges in EU ports.

### 5. Raise the environmental profile of ports:

- to encourage a more consistent application of environmentally differentiated port infrastructure charges, the Commission will propose principles for environmental charging and promote the exchange of good practices by 2015;
- the Commission is planning a review of the Directive on port reception facilities in 2013/2014 with the view to further improving the effectiveness and efficiency of the system.

6. Encourage innovation: the competitiveness of European ports will depend on their ability to innovate in terms of technology, organisation and management. Their critical roles as multi-modal hubs require innovative and efficient ways of cross-modal connections and use of management tools in order to further increase their attractiveness. In the context of the implementation of the Horizon 2020 programme to support research, development and innovation from 2014 to 2020, the Commission will propose priority tasks where EU support could be envisaged.

Follow-up: the Commission will check progress against delivery of the policy objectives defined in this Communication, notably progress in developing multimodal connections to the port hinterland, modernising port services and attracting investments.

## Provision of port services and financial transparency of ports

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**PURPOSE:** to establish a framework on market access to port services and financial transparency of ports.

**PROPOSED ACT:** Regulation of the European Parliament and of the Council.

**ROLE OF THE EUROPEAN PARLIAMENT:** the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

**BACKGROUND:** there are more 1200 sea ports in Europe. Port activities represent up to 3 million (direct and indirect) jobs in the 22 maritime Member States. 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 \(TEN-T\)](#).

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.

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 proposal fits within the policy announced by the Commission in the [White Paper on Transport \(2011\)](#). It complements other initiatives, such as the [proposal for a Directive on the awards of concession contracts](#) which applies to concession contracts in ports.

In the Communication on the [Single Market Act II: Together for new growth](#), the Commission 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.

**IMPACT ASSESSMENT:** the impact assessment identified five operational objectives related to the two main challenges:

1. Modernise port services and operations: (i) clarify and facilitate access to the port services market; (ii) prevent market abuse by designated port service providers; and (iii) improve coordination mechanisms within ports.
2. Create framework conditions to attract investments in ports: (i) make the financial relations between public authorities, port authorities and providers of port services transparent; and (ii) ensure autonomously set and transparent port infrastructure charges.

The preferred option is that of regulated competition and port autonomy.

The impact assessment highlights the potential benefits in terms of costs savings (EUR 10 billion up to 2030), the development of short sea shipping and reduction of road congestion and creation of jobs.

**LEGAL BASIS:** Article 100 (2) of the Treaty on the Functioning of the European Union (TFEU).

**CONTENT:** the proposed Regulation seeks to establish: (a) a clear a clear framework for access to the market of port services; and (b) common rules on the financial transparency and charges to be applied by managing bodies or providers of port services.

**Scope:** the Regulation shall apply to all seaports listed in the Commissions proposal for a Regulation on the trans-European Transport Network Guidelines.

**Freedom to provide services:** 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.

**Limitation on the number of service providers:** 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: (i) either in the case of space constraints or reservation which, if clearly documented in a formal port development plan, can justify limiting the number of operators active in the port perimeter or (ii) in the case of a public service obligation imposed on an operator and for which the intention should be clear and publicly available.

**Public service obligations:** 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.

**Employees rights:** 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.

**Regulated competition:** 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.

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.

Transparent port infrastructure charges: 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.

Advisory committee: a port users' advisory committee should be set up in every port. This committee would 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 should be consulted on the structure and the level of the port infrastructure charges and, in certain cases, the port service charges.

Consultation of stakeholders: 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.

Monitoring and supervision: 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.

BUDGETARY IMPACT: the proposal has no impact on the budget of the European Union.

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.

## Provision of port services and financial transparency of ports

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The Council took note of the state of play regarding proposed new rules for market access to port services and financial transparency of ports, based on a progress report drawn up by the Presidency.

To recall, the examination by the Shipping Working Party began in October 2013, during the Lithuanian Presidency and continued under the Lithuanian Presidency.

The Committee on Transport and Tourism (TRAN), the responsible committee of the European Parliament, has appointed Mr Knut Fleckenstein (S&D-Germany) as rapporteur for the proposal. The rapporteur submitted his draft report on 11 November 2013. However, due to lack of time and to the fact that several key questions remained open, TRAN decided not to vote on the report before the elections to the European Parliament.

It should be noted that seven national parliaments submitted a reasoned opinion on the proposal (Belgium, Spain, France, Latvia, Malta, Poland and Sweden).

The majority of Member States supports the general objectives of the proposal. However, they express concerns with regard to both the substance of the Directive and the choice of legal instrument, the majority of delegations prefer a Directive, considering that "soft law", e.g. guidelines, would suffice, in place of a Regulation.

The concerns expressed by delegations relate to, among other things, the scope of the Regulation, so far as it concerns both the services and the ports subject to the Regulation.

Scope for the provision of services: many Member States have proposed additional exclusions of port services, first and foremost of services related to safety aspects (pilotage) and to port infrastructure (dredging). It has been suggested that either only seaports which are part of the core network (i.e. mostly larger ports) be included in the scope or any TEN

-T seaport that receive public funds.

Procedures: most Member States would like to see simpler, more coherent and less cumbersome procedures throughout the proposal. Many delegations have called for:

- more flexibility as regards the procedural framework when ensuring compliance with the minimum requirements for the provision of port services;
- more flexibility with regard to limiting the number of service providers. For the limitation of the number of port services it has been asked to add considerations for safety, security and environmental sustainability.

Consulting the port users and supervision: Member States support the principle of consulting the port users and relevant stakeholders, but they believe it should be left to the ports or to the Member States to decide on the nature and timing of this consultation.

With regard to the national independent supervisory bodies, the majority of Member States expressed concerns about the risk of creating additional administrative burdens and about the functioning of the supervision mechanism.

Port infrastructure charges: several Member States expressed concerns as regards the impact of the proposed regulation on the autonomy and commercial freedom of ports. A broad majority of Member States is against the proposed right of the Commission to harmonise port infrastructure charges through delegated acts.

State aid: some Member States have pointed out that it is important to clarify the State aid regime in ports. Furthermore, the proposal should be read and re-evaluated in conjunction with the new concessions Directive

Finally, it should be noted that several Member States have referred to the draft report by the EP rapporteur as containing improvements of

several aspects of the proposal.

## Provision of port services and financial transparency of ports

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The Committee on Transport and Tourism adopted the report by Knut FLECKENSTEIN (S&D, DE) on the 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.

The committee recommended that the position adopted by the European Parliament at first reading under the ordinary legislative procedure should amend the Commission proposal as follows.

**Subject matter and scope:** This Regulation shall establish a clear framework for the organisation of port services and shall apply to all maritime ports of the trans-European transport network, listed in Annex II of Regulation (EU) No 1315/2013 of the European Parliament and the Council. Dredging is excluded from the list of services.

**Member States may:** (i) decide not to apply this Regulation to maritime ports of the comprehensive trans-European transport network located in the outermost regions; (ii) introduce derogations in order to avoid disproportionate administrative burdens for those maritime ports of the comprehensive trans-European transport network the annual traffic of which does not justify the full application of this Regulation.

**Organisation of port services:** Members noted that the Union's port system is highly diverse and includes many different models for the organisation of port services. Accordingly, a single system would not be appropriate.

Therefore, Chapter II of the Commission proposal (market access) as amended, now relates to the organisation of port services with provisions on minimum requirements, limitation of the number of providers, services under public service obligation and social safeguards.

This Chapter, with the exception of provisions on training and labour protection and certain transitional provisions shall not apply to cargo handling services, passenger services and pilotage.

- Minimum requirements: these requirements shall relate to:

- the availability of the port service to all users, at all berths and without interruptions day and night, throughout the year;
- the compliance with national social and labour legislation of the Member State of the port concerned, including the terms of collective bargaining agreements
- the good repute of the port service provider, as determined by the Member State.

- Limit the number of providers of port service: without prejudice to the existing different models for the organisation of port services, the managing body of the port or the competent authority may limit the number of providers of port service for a given port service for one or several of the following reasons:

- the scarcity of waterside space, where this constitutes an essential element of the ability to provide the port service concerned in a safe and efficient way;
- the inability of the characteristics of the port traffic;
- the need to ensure the provision of safe, secure or environmentally sustainable port operations.

Any limitation of providers for a port service shall follow a selection procedure, which shall be open to all interested parties, non-discriminatory and transparent.

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 shall take necessary measures to avoid conflicts of interest.

- Public service obligations: Member States shall designate the competent authority within their territory, which may be the managing body of the port, entitled to implement public service obligations related to port services on providers in order to ensure at least one of the following:

- the safety, security or environmental sustainability of ports operations;
- the provision of adequate transport services to the public and territorial cohesion.

- Workers rights: the report stipulated that the competent authority shall require the designated provider of port services to grant staff working conditions on the basis of binding national, regional or local social standards. Furthermore, the Member States should ensure the employees rights in the case of a transfer of undertakings or businesses.

Members introduced a new article obliging the employer to ensure that its employees receive the necessary training to acquire a sound knowledge of the conditions in which their work is conducted and that they are properly trained to tackle the hazards which the work may entail.

In full respect of the autonomy of social partners, the EU-level Sectoral Social Dialogue Committee for Ports is invited to develop guidelines for the establishment of training requirements to prevent accidents and ensure the highest level of safety and health for workers.

**Port charging:** the amended text stipulated that the port infrastructure charges may vary in accordance with the port's economic strategy and the port's spatial planning policy related, inter alia, to certain categories of users. The criteria used for such a variation shall be fair, non-discriminatory as to nationality and shall comply with State aid and competition rules.

The managing body of the port may set the charges autonomously according to their business strategy. To that end, Members restricted the Commissions power for delegated acts to the classifications of vessels and fuels and types of operations according to which the infrastructure charges can vary and common charging principles for port infrastructure charges.

**Consultation of port users and stakeholders:** the managing body of the port shall ensure that adequate mechanisms for the consultation of port users, including relevant interconnected transport operators, are in place. It shall consult port users in the event of substantial changes to port infrastructure charges.

The managing body of the port shall regularly consult the relevant stakeholders operating in the port area, where appropriate on the following: (i) the consequences of planning and of spatial planning decisions in terms of environmental performance; (ii) measures to ensure and

improve safety in the port area, including health and safety of port workers and information on access to training of port workers.

Independent controls: the amended text stipulates that Member States shall ensure that effective mechanisms are in place to handle complaints for all the maritime ports covered by this Regulation on the territory of each Member State. To that end, the Member States shall designate one or more bodies and ensure that port users and other relevant stakeholders are informed of where and how to lodge a complaint.

Entry into force: Members proposed that the Regulation shall apply two years after the date of entry into force of the Regulation (rather than from 1 July 2015).

## Provision of port services and financial transparency of ports

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The European Parliament adopted (by 451 votes to 243, with 18 abstentions) amendments to the 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.

The matter has been referred back to the committee. The vote has been postponed to a subsequent sitting.

The main elements adopted in plenary are as follows:

Subject matter and scope: although the Commission proposal sought to establish a framework on market access to port services, Parliament proposed that the Regulation shall establish a clear framework for the organisation of port services which shall apply to all maritime ports of the trans-European transport network, listed in Annex II of [Regulation \(EU\) No 1315/2013](#) of the European Parliament and the Council. Dredging is excluded from the list of services.

Parliament stated that this Regulation shall not impose a specific port management model to the managing bodies of ports. Provided that rules relating to market access and financial transparency are respected, existing port management models established at national level in the Member States can be maintained.

Organisation of port services: Chapter II of the Commission proposal (market access) as amended, now relates to the organisation of port services which may be subject to: (a) minimum requirements to port service providers; (b) limitations of the number of providers; (c) public service obligations; (d) internal operators; (e) free open access to the market of port services.

This Chapter, with the exception of provisions on training and labour protection and certain transitional provisions shall not apply to cargo handling services, passenger services and pilotage.

- Minimum requirements: these requirements shall relate to:

- the availability of the port service to all users, at all berths and without interruptions day and night, throughout the year;
- the compliance with national social and labour legislation of the Member State of the port concerned, including the terms of collective bargaining agreements
- the good repute of the port service provider, as determined by the Member State.

- Limit the number of providers of port service: the list of reasons limiting the number of providers of port services shall include:

- the scarcity of waterside space, where this constitutes an essential element of the ability to provide the port service concerned in a safe and efficient way;
- the inability of the characteristics of the port traffic;
- the need to ensure the provision of safe, secure or environmentally sustainable port operations.

Any limitation of providers for a port service shall follow a selection procedure, which shall be open to all interested parties, non-discriminatory and transparent.

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 shall take necessary measures to avoid conflicts of interest.

- Public service obligations: Member States shall designate the competent authority within their territory, which may be the managing body of the port, entitled to implement public service obligations related to port services on providers in order to ensure at least one of the following:

- the availability of the service to all users, where appropriate on equal terms ;
- the safety, security or environmental sustainability of ports operations;
- the provision of adequate transport services to the public and territorial cohesion.

- Workers rights: Parliament stipulated that the competent authority shall require the designated provider of port services to grant staff working conditions on the basis of binding national, regional or local social standards. The managing bodies of the port or the competent authority shall require all providers of port services to comply with all social and labour standards as set out in Union and/or national law, as well as applicable collective agreements in accordance with national customs and traditions. Furthermore, the Member States shall ensure the employees rights in the case of a transfer of undertakings or businesses.

Members introduced a new article obliging the employer to ensure that its employees receive the necessary training to acquire a sound knowledge of the conditions in which their work is conducted and that they are properly trained to tackle the hazards which the work may entail.

Financial transparency: Parliament noted that where the managing body of the port that receives public funds provides port services or dredging itself, it shall keep the accounts of that publicly funded activity or investment separate from the accounts of its other activities.

Port charging: the amended text stipulated that the port infrastructure charges may vary in accordance with the port's economic strategy and the port's spatial planning policy related, inter alia, to certain categories of users. The criteria used for such a variation shall be fair, non-discriminatory as to nationality and shall comply with State aid and competition rules.

The managing body of the port may set the charges autonomously according to their business strategy. To that end, Members restricted the Commissions power for delegated acts to the classifications of vessels and fuels and types of operations according to which the infrastructure



charges can vary and common charging principles for port infrastructure charges.

Consultation of port users and stakeholders: the managing body of the port shall ensure that adequate mechanisms for the consultation of port users, including relevant interconnected transport operators, are in place. It shall consult port users in the event of substantial changes to port infrastructure charges.

The providers of port services shall provide port users with adequate information about the structure of port service charges and the criteria used to determine them.

The managing body of the port shall regularly consult the relevant stakeholders operating in the port area, where appropriate on the following: (i) the consequences of planning and of spatial planning decisions in terms of environmental performance; (ii) measures to ensure and improve safety in the port area, including health and safety of port workers and information on access to training of port workers.

Independent controls: the amended text stipulates that Member States shall ensure that effective mechanisms are in place to handle complaints for all the maritime ports covered by this Regulation on the territory of each Member State. To that end, the Member States shall designate one or more bodies and ensure that port users and other relevant stakeholders are informed of where and how to lodge a complaint.

Entry into force: Members proposed that the Regulation shall apply two years after the date of entry into force of the Regulation (rather than from 1 July 2015).

## Provision of port services and financial transparency of ports

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The European Parliament adopted by 546 votes to 140, with 22 abstentions, a legislative resolution on the 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.

The issue had been sent back to the committee for review at its 8 March 2016 plenary session.

Parliaments position adopted at first reading following the ordinary legislative procedure amended the Commission proposal as follows:

Subject matter and scope: this Regulation establishes a framework for the provision of port services and common rules on financial transparency and on port service and port infrastructure charges.

This Regulation should give Member States the possibility to decide whether or not to apply this Regulation to maritime ports of the comprehensive network located in the outermost regions.

Parliament noted that the Regulation should:

- in no way prejudice the rules in Member States governing the system of property ownership applicable to maritime ports, and should allow for different port structures in Member States;
- not impose a specific model for the management of maritime ports and does not affect in any way the competence of Member States to provide, in conformity with Union law, non-economic services of general interest.

Different port management models are possible, provided that the framework for the provision of port services and the common rules on financial transparency set out in this Regulation are respected.

Organisation of port services: access to the market for the provision of port services in maritime ports may, in accordance with this Regulation, be subject to: (i) minimum requirements for the provision of port services; (ii) limitations on the number of providers; (iii) public service obligations; (iv) restrictions related to internal operators.

Member States may decide by national law not to impose any of the conditions on one or more categories of port services.

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

The Chapter on the organisation of port services should not apply to the provision of cargo-handling, passenger services or pilotage.

Minimum requirements for the provision of port services: these requirements concern:

- the availability of the relevant port service to all users, at all berths and without interruptions, day and night, throughout the year;
- compliance with requirements on maritime safety or the safety and security of the port or access to it, its installations, equipment and workers and other persons;
- compliance with obligations in the field of social and labour law that apply in the Member State of the port concerned, including the terms of applicable collective agreements, manning requirements and requirements relating to hours of work and hours of rest for seafarers, and with applicable rules on labour inspections;
- the good repute of the port service provider.

The minimum requirements shall be: (i) transparent, objective, non-discriminatory, proportionate, and relevant to the category and nature of the port service concerned; (ii) complied with until the right to provide a port service expires.

Procedure to ensure compliance with the minimum requirements: the managing body of the port, or the competent authority, shall grant or refuse the right to provide port services on the basis of the minimum requirements within a reasonable period, which in any event shall not exceed four months, from receiving a request for the granting of such a right and the necessary documents. Any such refusal shall be duly justified.

Limitations on the number of providers of port services: the managing body of the port, or the competent authority, may limit the number of providers of port services for a given port service for one or more of the following reasons:

- the scarcity or reserved use of land or waterside space;
- the absence of such a limitation is obstructing the performance of public service obligations as well as the need to ensure safe, secure or environmentally sustainable port operations;
- the characteristics of the port infrastructure or the nature of the port traffic are such that the operations of multiple providers of port services in the port would not be possible;

- where it has been established that a port sector or sub-sector, together with its port services, within a Member State carries out an activity that is directly exposed to competition.

The procedure for choosing providers of port services and its result should be made public and should be non-discriminatory, transparent and open to all interested parties.

If the managing body of a port, or the competent authority, provides port services itself or through a legally distinct entity which it directly or indirectly controls, measures should be taken to avoid conflicts of interests and to ensure fair and transparent market access to port services when the number of providers of port services is limited.

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

- the availability of the port service to all port users, at all berths, without interruption, day and night, throughout the year;
- the availability of the service to all users on equal terms;
- the affordability of the service for certain categories of users;
- the safety, security or environmental sustainability of port operations;
- the provision of adequate transport services to the public; and
- territorial cohesion.

Employees' rights: Parliament stated that the managing body of the port, or the competent authority, shall require the designated provider of port services to grant staff working conditions in accordance with applicable obligations in the field of social and labour law and to comply with social standards as set out in Union law, national law or collective agreements.

Parliament introduced a new Article stipulating that providers of port services shall ensure that employees receive the necessary training to acquire the knowledge which is essential for their work, with particular emphasis on health and safety aspects, and that training requirements are regularly updated to meet the challenges of technological innovation.

Financial transparency: Parliament specified where the managing body of a port in receipt of public funds provides port services or dredging itself, or another entity provides such services on its behalf, it shall keep the accounts for that publicly funded port service or dredging separate from those for its other activities.

Port infrastructure charges: the amended text stipulates port infrastructure charges may vary, in accordance with the port's own economic strategy and its spatial planning policy, in relation to, inter alia, certain categories of users. The criteria for such a variation shall be transparent, objective and non-discriminatory, and shall be consistent with competition law, including rules on State aid.

Consultation of port users and other stakeholders: the managing body of the port shall, in accordance with applicable national law, consult port users on its charging policy. Such consultation shall include any substantial changes to the port infrastructure charges and port service charges in cases where internal operators provide port services under public service obligations.

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

The managing body of the port shall, in accordance with applicable national law, consult port users and other relevant stakeholders on essential matters within its competence regarding: (i) environmental matters; (ii) spatial planning; and (iii) measures to ensure safety in the port area, including, where appropriate, health and safety of port workers.

Handling of complaints: each Member State shall ensure that an effective procedure is in place to handle complaints arising from the application of this Regulation for its maritime ports covered by this Regulation. Member States shall ensure that there is effective functional separation between the handling of complaints, on the one hand, and the ownership and management of ports, provision of port services and port use, on the other hand.

Transitional measures: port service contracts concluded before the date of adoption of this Regulation which are not limited in time, or have similar effects, shall be amended in order to comply with this Regulation by 1 July 2025.

## Provision of port services and financial transparency of ports

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**PURPOSE:** to establish a framework on market access to port services and financial transparency of ports.

**LEGISLATIVE ACT:** Regulation (EU) 2017/352 of the European Parliament and of the Council establishing a framework for the provision of port services and common rules on the financial transparency of ports.

**CONTENT:** this Regulation establishes a framework for the provision of port services and common rules on financial transparency and on port service and port infrastructure charges.

**Scope:** this Regulation applies to all maritime ports of the trans-European transport network (as listed in [Regulation \(EU\) No 1315/2013](#) of the European Parliament and of the Council) through which the overwhelming majority of Union maritime traffic transits.

Member States are given the possibility to decide whether or not to apply this Regulation to maritime ports of the comprehensive network located in the outermost regions.

As regards the different categories of port services, cargo-handling and passenger services will be subject to the rules of financial transparency, but shall be excluded from the provisions on the provision of port services.

Member States may also decide to apply the rules for access to pilotage services. In such cases, they shall inform the Commission accordingly. The accounts for dredging should be kept separate from those for other activities.

**Access to port services:** the Regulation will create a more level playing field by establishing clear and fair conditions for access to the port services market throughout Europe.

In order to take account of the diversity of the port sector in Europe and the particular circumstances of the Member States, Member States and port management bodies may: (i) impose certain minimum requirements for the provision of port services, (ii) limit the number of service providers in a limited number of cases, or (iii) impose public service obligations.

Minimum requirements concern:

- the professional qualifications of the provider of port services and their good repute;
- compliance with requirements on maritime safety or the safety and security of the port or access to it, its installations, equipment and workers and other persons;
- compliance with environmental requirements;
- compliance with obligations in the field of social and labour law that apply in the Member State of the port concerned.

The reasons to limit the number of providers of port services include:

- the scarcity or reserved use of land or waterside space;
- the characteristics of the port infrastructure or the nature of the port traffic are such that the operations of multiple providers of port services in the port would not be possible.

Public service obligations may concern, for instance:

- the safety, security or environmental sustainability;
- the provision of adequate transport services to the public.

Where the managing body of the port decides to limit the number of providers of a port service, it shall follow a selection procedure which shall be open to all interested parties, non-discriminatory and transparent.

Employees rights: the managing body of the port shall require the designated provider of port services to grant staff working conditions in accordance with applicable obligations in the field of social and labour law and to comply with social standards as set out in Union law, national law or collective agreements.

Financial transparency: the Regulation ensures transparency of port services and port infrastructure charges. Financial relations between maritime ports in receipt of public funds and providers of port services, on the one hand, and public authorities, on the other hand, shall be made transparent.

When the managing body of a port receives public funds, it shall keep the accounts separate from those for its other activities.

Member States shall ensure that a port infrastructure charge is levied. The Regulation stipulates that port infrastructure charges may vary, in accordance with the ports own economic strategy and its spatial planning policy, in relation to, inter alia, certain categories of users.

The criteria for such a variation shall be transparent, objective and non-discriminatory, and shall be consistent with competition law, including rules on State aid.

Handling of complaints: each Member State shall ensure that an effective procedure is in place to handle complaints from its maritime ports covered by this Regulation.

ENTRY INTO FORCE: 23.3.2017.

The Regulation shall apply from 24.3.2019.