

Proposal for a Regulation establishing a framework on market access to port services and financial transparency of ports

ECSCA input for the TRAN Committee discussion of 5 May 2015

1. We need a comprehensive EU legal instrument on ports

Ports have a key role to play in the EU transport and logistics system. Shipowners heavily depend on well-functioning ports. In several European ports, shipowners however still face restrictive practices and legal obstacles on market access to port services, as well as a lack of transparency on port dues and port service charges.

We have therefore welcomed the European Commission's Regulation proposal, even though we regretted the fact that the Commission a priori excluded cargo-handling and passenger services from the scope of the market access chapter. This is a missed opportunity to provide a comprehensive legal framework for port services. We therefore call upon the European Parliament to rectify this omission.

In general, the Regulation introduces a number of fundamental principles that port users would like to see confirmed urgently:

- freedom to provide services applies to ports and port services (chapter II);
- financial transparency prevails when public money is involved in the operation of ports and port services, as well as in case of closed markets (chapter III);
- port users must be consulted on port dues and services charges (chapter IV);
- autonomous port management requires independent supervision (chapter IV).

2. An EU Ports' Regulation has to contain a balanced market access chapter

Restrictive practices and legal obstacles continue to hamper market access to port services in several EU ports. The problem today is that shipowners or other parties wishing to act against these anomalies cannot fully do so by lack of a legal basis. Articles 58 and 100 of the TFEU stipulate that the freedom to provide services does not apply directly to ports and can only become applicable through secondary legislation. An EU legal framework which clarifies that this essential Treaty principle applies to ports and elaborates how it can be applied in an equitable manner is therefore an absolute must.

We cannot understand why some stakeholders would want to exclude the market access chapter from the Regulation, especially since the Commission's proposal does not introduce a blind form of liberalisation. On the contrary, it foresees the possibility to limit market opening for reasons of safety and professional qualifications. Shipowners support these conditions, provided that the principle of openness prevails. Restrictions can only be the exception rather than the rule and must therefore be cautiously applied; they must be clearly justifiable, proportional and transparent.

3. All port services must be covered by market access rules

All port services should be covered by market access rules. Port users therefore strongly support the inclusion of cargo-handling and passenger services. When looking at port performance, these services are crucial and represent the most significant part of port call costs. That is why it is essential that there is a proper framework in place to address any restrictive practices and legal obstacles.

All technical-nautical services, including pilotage, towage and mooring, should furthermore remain firmly within the scope of the Regulation. Safety or public service reasons to exclude them do not uphold, as the proposal already foresees the necessary provisions to take these aspects into account in an appropriate manner.

4. Transparency is an important starting point

The Regulation proposal essentially requests transparency when public money is involved in the operation of ports and port services, and in case a port service is provided within a market that is not entirely open. We welcome this balanced approach as a fair and normal obligation put upon the managing body of the port or the port service provider. There is no reason whatsoever why this obligation would only have to apply to larger ports.

Financial transparency is an important starting point, but the ultimate goal should be the establishment of clear State aid rules for seaports. Port users have joined port authorities and port service providers in a long-standing call for clarity and legal certainty on this matter. There should therefore be no further undue delay.

Financial transparency should not exclude room for commercial negotiations on port infrastructure charges. Such negotiations favour both parties; they allow the port authority to attract the traffic that fits into its development strategy and they allow users to obtain the most favourable market conditions. Therefore, criteria upon which variations are based should not be defined in a limited way, nor be overly prescriptive. As international operators, shipowners in any case oppose regional common classifications of vessels, fuels and types of operations for the purpose of having environmentally differentiated charges. These classifications should be developed at global level and consequently be left to the International Maritime Organisation (IMO).

5. Port users have to be consulted

Shipowners support to have a mechanism in place that ensures that users are heard by the managing body of the port and port service providers. Obligatory consultation prior to the setting of port infrastructure charges and, in case of limited access to markets, port services charges, is needed.

Shipowners, as any customers, also want to have the right to express their views on developments that are extremely important for them, such as coordination of port services, hinterland connections and administrative simplification. The more user-led information feeding into the decision process, the more it will benefit the performance and quality of the port and its hinterland connections.

6. Autonomous port management requires independent supervision

We respect the existence of different port management models in the EU and support the Commission's proposal that the managing body of a port should have the ability to work autonomously.

However, given the natural monopoly position and potential market power that port authorities have, there must be a clear guarantee that, in case of conflicts or disagreement, an independent and efficient form of supervision can be called upon to intervene. Today, managing bodies of ports are often interlinked with different governmental organisations, which makes it very difficult for port users to be heard.

We do not plead for rigid forms of regulation, nor do we insist on creating new entities. The key element is to have an independent mechanism, without adding unnecessary additional bureaucratic procedures. We believe that the Commission's proposal strikes the right balance in this respect.

7. We need more than the Ports' Regulation

The Regulation proposal was part of a broader package, including a Commission Communication that touched upon other aspects of a comprehensive EU port policy. There are indeed more issues to be looked into. From a shipowner's perspective, the following are fundamental: simplification of administrative procedures, completion of the internal market for shipping and encouraging the use of pilotage exemption certificates. Continued efforts to implement such an all-encompassing port policy are therefore essential.

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The European Community Shipowners' Associations (ECSA) represents the national shipowners' associations of the EU and Norway. Our aim is to promote the interests of European shipping, so that the industry can best serve European and international trade and commerce in a competitive free enterprise environment to the benefit of shippers and consumers, and help formulate EU policy on critical maritime transport-related issues.

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