

**Opinion of the European Economic and Social Committee 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'**

COM(2013) 296 final — 2013/0157 (COD)

(2013/C 327/19)

Rapporteur-general: **Mr SIMONS**

On 19 June 2013 the Council, and on 10 June the European Parliament, decided to consult the European Economic and Social Committee, under Article 100(2) of the Treaty on the Functioning of the European Union, 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*

COM(2013) 296 final — 2013/0157 (COD).

On 21 May 2013 the European Economic and Social Committee decided to instruct the Section for Transport, Energy, Infrastructure and the Information Society to prepare the Committee's work on the subject.

Given the urgent nature of the work (Rule 59 RP), the Committee appointed Mr Simons as rapporteur-general at its 491st plenary session, held on 10 and 11 July 2013 (meeting of 11 July 2013), and adopted the following opinion by 81 votes to 2.

## 1. Conclusions and recommendations

1.1 The Committee endorses the combination of a "soft law" approach with legislation, where there is no alternative.

1.2 The Committee supports the Commission's approach of applying the proposals to all 319 TEN-T ports, with Member States having the opportunity to apply the provisions of the regulation to other ports.

1.3 Given their low impact at present, the Committee approves the Commission proposal to leave passenger transport and cargo handling services outside the scope of the regulation. Nevertheless, in terms of implementation, the Committee recommends that particular attention be paid to pilotage, mooring and towage, taking due account of their different impacts, so these can be exercised under independent judgement, free of any commercial pressure that could prejudice the safety, security and environmental protection of the port community and the general public.

1.4 The Committee is pleased that the regulation includes safeguards for employee rights but wonders why the application of Directive 2001/23/EC is made optional. As regards the social aspects that should be included in public and concession contracts, the Committee refers to its opinion on procurement by entities operating in the water, energy, transport and postal services sectors adopted on 26 April 2012 <sup>(1)</sup>. The Committee's long-standing wish to see independent social dialogue in the ports sector has also recently been fulfilled.

1.5 The Commission's basic idea of increasing financial transparency in the ports sector has the Committee's support, as this makes it possible to obtain information on any public funding at an earlier stage.

1.6 The commercial freedom of the port managing body to set port charges is rather undermined by the list of criteria and the powers conferred on the Commission to adopt delegated acts. A solution is proposed in point 5.5.

1.7 The Committee considers the independent supervisory body referred to in Article 17, which is to be responsible for monitoring and supervising the application of the regulation, to be superfluous. Competition law is usually sufficient, and where this is not the case specific action should be taken.

1.8 The Commission proposes that the regulation be evaluated and, if appropriate, measures proposed three years after its entry into force. The Committee considers this period to be too short and suggests a mid-term review with comments within three years, and a final evaluation with conclusions only after six years.

## 2. Introduction

2.1 Third time lucky! This is now the third time that the European Commission has put forward proposals on the EU's seaports; this time against a different backdrop and adopting a different approach.

<sup>(1)</sup> OJ C 191, 29.6.2012, p. 84.

2.2 What is new here is the inclusion of 319 seaports in the Trans-European Transport Network (TEN-T) and the Connecting Europe Facility (CEF) in order to improve seaports and their hinterland connections. As a result, these seaports now, by definition, become a European interest but also each other's competitors, at least potentially.

2.3 Past "soft" measures have had virtually no effect on fair market access and transparency. This is why there is now, in addition to a number of actions, a proposal for a "hard" measure - a regulation - on these two issues, to enable EU ports to become an engine for growth and multimodal transport.

### 3. The Commission documents

3.1 Following a long and detailed consultation, as described in the impact assessment, the Commission proposes in its communication entitled "Ports: an engine for growth" a set of eight additional, "soft" actions that it believes are necessary to develop opportunities for 319 ports, 83 of which form part of the TEN-T core network, in the coming years.

3.2 The Commission proposes that the basic principle of the EU's strategy should be that no unnecessary action should be taken at ports that perform well, but that support should be provided at ports whose performance is lagging behind, by introducing "best practices" and an approach based on sound management, while respecting the diversity and specific circumstances of the different ports.

3.3 Port activities contribute directly to employment. Currently 2 200 port operators directly employ 110 000 port workers, while the ports in 22 maritime Member States directly or indirectly employ some 3 million workers. These represent a major source of tax revenues for governments.

3.4 The Proposal for a Regulation establishing a framework on market access to port services and financial transparency of ports explicitly states that the principle of freedom to provide services applies to all forms of service provision in all TEN-T ports.

3.5 However, the section on market access (Chapter II) and the transitional measures (Article 24) of the draft regulation will not apply to passenger and cargo handling services.

3.6 This gives the port managing body the freedom to impose quality and availability requirements on service providers, under which the managing body may limit the number of providers of a specific service in the case of space constraints, provided that this is clearly documented in a formal port development plan, or that the operator has a public service obligation, the intention of which must be clear and publicly available.

3.7 The Commission proposes that the rights of workers be safeguarded and that Member States have the opportunity to

further strengthen these rights in the event of a transfer of the operating company and the relevant staff working for the previous operator.

3.8 The proposal states that the financial relations between public authorities and the managing body of a port should be transparent, especially if the port managing body receives public funds.

3.9 The port managing bodies can set the charges for the use of port infrastructure independently and in line with their own commercial and investment strategy. Charges may vary in accordance with frequency of use of the port, or in order to promote a more efficient use of the port infrastructure, short sea shipping or energy or carbon-efficient performance of transport operations.

3.10 Under the proposal, Member States are required to have an independent national body to supervise the application of this regulation.

3.11 This should be a legally independent body, functionally independent of port operators and port service providers. It would handle complaints, would have the right to require port managing bodies, port service providers and port users to submit information needed to ensure effective monitoring and supervision, and would take binding decisions, which would be subject to judicial review.

### 4. General comments

4.1 The Committee considers that, with the publication of this communication, the impact assessment and the proposal for a regulation, the Commission has taken a step towards opening up market access to port services and greater financial transparency of ports. The Committee points to the importance of improving the quality of services and increasing investment in ports, which is so essential for the smooth operation of the market. Safety, security, the environment and the EU's coordinating role are also given due attention.

4.2 The proposals published contain both a "soft law" approach consisting of the eight actions laid down in the communication, and a "hard" approach in the form of a proposal for a regulation. Broadly speaking, the Committee believes that, where possible, the "soft law" approach should be adopted and that legislation should only be used where there is no alternative. This is an idea previously put forward by the Committee in its opinion on the European ports policy <sup>(2)</sup>.

4.3 The proposal for a regulation applies to all 319 TEN-T ports, as by their nature they play an important role in the European transport system. The Member States remain free to apply the provisions of the proposal for a regulation to other ports. The Committee agrees with the Commission's approach, which it considers to be pragmatic.

<sup>(2)</sup> OJ C 27, 3.2.2009, p. 45.

4.4 The Committee notes that cargo handling services and passenger terminals remain outside the scope of the regulation (Article 11). The argument used by the Commission is that a large part of cargo handling services and passenger transport by cruise lines is operated on the basis of concessions, while passenger ferry services are usually a public service obligation. The Committee accepts the Commission's argument.

4.5 The principle of freedom to provide port services is at the forefront of the regulation. Four ways in which this freedom can be restricted are listed, i.e.

- the ability to impose minimum requirements on the provision of port services
- limitation of the number of port service providers
- public service obligations
- internal operator.

The Committee endorses this statement of the implementation of the principle of freedom to provide services, coupled with the possibility of applying a number of specific restrictions tailored to ports. Nevertheless, in terms of implementation, the Committee recommends that particular attention be paid to pilotage, mooring and towage, taking due account of their different impacts, so these can be exercised under independent judgement, free of any commercial pressure that could prejudice the safety, security and environmental protection of the port community and the general public.

4.5.1 It is unclear why the "internal operator" (Article 9) is limited to public service obligations. There can be purely commercial reasons, such as ensuring the continuity and availability of a service, why a port managing body might decide to provide a service itself without that service being specifically defined as a public service; lack of space or reserved use of available space could also require restrictions on the number of suppliers. This last scenario should also be included.

4.6 The Committee is pleased that the text of the regulation includes Article 10, which is intended to safeguard port workers' rights. The Committee wonders, however, why the application of Directive 2001/23/EC is made optional. As regards the social aspects that should be included in public and concession contracts, the Committee refers to its opinion on procurement by entities operating in the water, energy, transport and postal services sectors adopted on 26 April 2012 <sup>(3)</sup>.

4.7 The Commission has incorporated a number of articles into the regulation (Article 12 onwards) which promote financial transparency and autonomy. These provisions include requiring port authorities to provide information on public funding received and to maintain separate accounts for this where the managing body of the port provides port services itself. The Committee is an advocate of the greatest possible transparency and endorses the proposals in this area.

4.8 The Committee considers the independent supervisory body referred to in Article 17, which is to be responsible for monitoring and supervising the application of the regulation, to be superfluous, because it is not needed and bucks the trend for ports to develop as commercial operators providing market-orientated quality. Current national and European competition laws are usually sufficient, and where this is not the case, the Commission should take action specific to the Member State.

## 5. Specific comments

5.1 The need for sectoral social dialogue in ports is underlined by the estimate that in 2030 15 % more port workers will be needed than today. The Committee considers that a favourable social climate and the willingness of all of the parties concerned to enter into dialogue are one of the main conditions for efficient operation of ports.

5.2 The Committee therefore welcomes the announcement that an EU social dialogue committee was set up on 19 June 2013 in which the social partners will, in full autonomy, discuss working conditions, among other things.

5.3 The Committee agrees with the proposal that charges for the use of port infrastructure should be set on the basis of consultation with port users. The Committee believes that this method of setting charges is transparent.

5.4 One advantage of the regulation is, the Committee believes, the fact that port authorities are required to provide information on public funding received and on the way this funding is reflected in their cost price. This will make it possible to evaluate public funding at an earlier stage, which will be conducive to financial transparency.

5.5 One aspect which the Committee considers very important, the commercial freedom of the port managing body to set port charges (Article 14(1), (2) and (3)), is rather undermined by criteria listed in the following paragraphs and the powers conferred on the Commission to adopt delegated acts. This freedom can be preserved by simply dropping these paragraphs and adding the words "and competition" at the end of Article 14(3), thus: "... and in accordance with State aid and competition rules".

5.6 The Commission proposes to publish a report on the impact of this legislation within three years of the regulation's entry into force. The Committee believes that this report should be regarded as an interim report, because the timespan is too short to be able to issue a definitive conclusion. This would be justified after six years.

<sup>(3)</sup> OJ C 191, 29.6.2012, p. 84.

5.7 Lastly, the Committee reiterates that further steps should be taken to ensure fair competition between EU and neighbouring non-EU ports.

Brussels, 11 July 2013.

*The President  
of the European Economic and Social Committee*  
Henri MALOSSE

---