

Regulation (EU) 2017/352 of the European Parliament and of the Council
of 15 February 2017 establishing a framework for the provision of port services
and common rules on the financial transparency of ports (Text with EEA relevance)

REGULATION (EU) 2017/352 OF THE
EUROPEAN PARLIAMENT AND OF THE COUNCIL

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establishing a framework for the provision of port services
and common rules on the 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⁽¹⁾,

Having regard to the opinion of the Committee of the Regions⁽²⁾,

Acting in accordance with the ordinary legislative procedure⁽³⁾,

Whereas:

- (1) The full integration of ports in seamless transport and logistics 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 that contribute to the efficient use of ports and a climate favourable to investments to develop ports in line with current and future transport and logistics requirements.
- (2) Ports contribute to the long-term competitiveness of European industries in world markets while adding value and jobs in all Union coastal regions. In order to address the challenges facing the maritime transport sector and to improve the efficiency and the sustainability of transport and logistics chains, it is essential that the actions on administrative simplification set out in the Commission's communication of 23 May 2013 entitled 'Ports: an engine for growth' be implemented in tandem with this Regulation.
- (3) In its communication of 3 October 2012 entitled '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, as well as administrative simplification efforts in ports, and of reviewing restrictions on the provision of services at ports.

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- (4) Facilitating access to the port services market and introducing financial transparency and autonomy of maritime ports will improve the quality and efficiency of the service provided to port users and contribute to a climate that is more favourable to investment in ports, thereby helping to reduce costs for transport users and contributing to the promotion of short sea shipping and a better integration of maritime transport with rail, inland waterway and road transport.
- (5) The simplification of customs procedures can create significant economic advantages for maritime ports in terms of competitiveness. In order to promote fair competition and to reduce customs formalities, it is important that the competent authorities of the Member States adopt a proper and effective risk-based approach. In this context, it is necessary that the Commission consider the need for appropriate measures to reduce reporting formalities in maritime ports and to tackle unfair competition.
- (6) The establishment of a clear framework of transparent, fair and non-discriminatory provisions relating to the funding of and charges for port infrastructure and port services plays a fundamental role in ensuring that the port's own commercial strategy and investment plans and, where relevant, the general national ports policy framework comply fully with competition rules. In particular, the transparency of financial relations allows a fair and effective control of State aid, hence preventing market distortion. To that end, the Council conclusions of 5 June 2014 called upon the Commission to explore State aid guidelines for maritime ports, with the aim of ensuring fair competition and a stable legal framework for port investment.
- (7) The overwhelming majority of Union maritime traffic transits through the maritime ports of the trans-European transport network established by Regulation (EU) No 1315/2013 of the European Parliament and of the Council⁽⁴⁾. In order to achieve the aim of this Regulation in a proportionate way without imposing any unnecessary burden on other ports, this Regulation should apply to the maritime ports of the trans-European transport network, each of which plays 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. However, 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. Member States should also have the possibility of introducing derogations in order to avoid disproportionate administrative burdens for those maritime ports of the comprehensive network annual freight traffic of which does not justify the full application of this Regulation.
- (8) Deep sea pilotage services do not have a direct impact on the efficiency of ports as they are not used for the direct entry and exit of ports and therefore do not need to be included in this Regulation.
- (9) This 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.

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- (10) This Regulation does 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.
- (11) In accordance with the general principles set out in the Treaties, providers of port services should be free to provide their services in maritime ports covered by this Regulation. However, it should be possible to impose certain conditions on the exercise of that freedom.
- (12) This Regulation should not limit the managing body of the port, or the competent authority, in setting up its charging system, as long as port infrastructure charges paid by the operators of waterborne vessels or cargo owners are transparent, in particular easily identifiable, and non-discriminatory, and contribute to the maintenance and development of infrastructure and service facilities and to the provision of services that are needed to perform or to facilitate transport operations within the port area and on the waterways giving access to those ports that fall within the competence of the managing body of the port.
- (13) In the interest of efficient, safe and environmentally sound port management, the managing body of the port, or the competent authority, should be able to require that providers of port services are able to demonstrate that they meet minimum requirements for the performance of the service in an appropriate way. Those minimum requirements should be limited to a clearly defined set of conditions in so far as those requirements are transparent, objective, non-discriminatory, proportionate and relevant for the provision of the port service. In accordance with the general objectives of this Regulation, the minimum requirements should contribute to a high quality of port services and should not introduce market barriers.
- (14) It is important that all providers of port services, at the request of the managing body of the port, are able to demonstrate their ability to serve a minimum number of vessels, making available necessary staff and equipment. They should apply the relevant provisions and rules, including the applicable labour law and relevant collective agreements and the quality requirements of the port concerned.
- (15) In deciding whether a port service provider satisfies the requirements of good repute, the competent authority, or the managing body of the port, should consider whether there are any compelling grounds to doubt the reliability of the provider of port services, such as convictions or penalties for serious criminal offences, or serious infringements of applicable Union and national law.
- (16) Member States should be able to require compliance with obligations in the field of social and labour law for the operation of port services in the port concerned.
- (17) Member States should inform the Commission prior to any decision to impose a flag requirement for vessels predominantly used for towage and mooring operations. Such

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a decision should be non-discriminatory, should be based on transparent and objective grounds and should not introduce disproportionate market barriers.

- (18) Where compliance with minimum requirements is required, the procedure for granting the right to provide port services should be transparent, objective, non-discriminatory and proportionate, and should allow the providers of port services to start the provision of their port services in a timely manner.
- (19) Since ports are constituted of limited geographical areas, the number of providers of port services could, in certain cases, be subject to limitations relating to the scarcity of land or waterside space, the characteristics of the port infrastructure or the nature of the port traffic, or the need to ensure safe, secure or environmentally sustainable port operations.
- (20) Any limitation on the number of providers of port services should be justified by clear and objective reasons and should not introduce disproportionate market barriers.
- (21) The managing body of the port, or the competent authority, should publish its intention to conduct a selection procedure for the provision of a port service, including on the internet and, where appropriate, in the *Official Journal of the European Union*. Such publication should contain information on the selection procedure, the deadline for the submission of tenders, the relevant award criteria and information on how the relevant documents necessary to prepare an application can be accessed.
- (22) In order to ensure transparency and equal treatment, amendments to the provisions of a contract during its term should be considered to constitute a new award of a contract when they render the contract materially different in character from the original contract and, therefore, such as to demonstrate the intention of the parties to renegotiate the essential terms of that contract.
- (23) This Regulation should be without prejudice to the right of Member States to impose public service obligations related to port services.
- (24) The Union has a wide variety of maritime ports with different models for the organisation of port services. Accordingly, imposing a single model would not be appropriate. The managing body of the port, or the competent authority, should be able to limit the number of providers of a given port service, where justified for one or more reasons.
- (25) Article 34 of Directive 2014/25/EU of the European Parliament and of the Council⁽⁵⁾ provides that contracts intended to enable certain types of activity to be carried out shall not be subject to that Directive if the Member State or the contracting entities can demonstrate that, in the Member State in which the activity is performed, the activity is directly exposed to competition in markets to which access is not restricted. The procedure for establishing whether this is the case should be that set out in Article 35 of Directive 2014/25/EU. Consequently, if it is established through that procedure that a port sector or subsector, together with its port services, is directly exposed to such competition, it is appropriate that it should not be subject to the rules framing the market access limitations under this Regulation.

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- (26) Except where a competitive market derogation applies, any intention to limit the number of providers of port services should be published in advance by the managing body of the port or the competent authority and should be fully justified, in order to give the interested parties the opportunity to comment.
- (27) 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. Such measures could, inter alia, take the form of entrusting the adoption of the decision limiting the number of providers of port services to a relevant national authority which is independent from the managing body of the port or from the competent authority.
- (28) The possibility to impose minimum requirements and limit the number of providers of port services that Member States continue to enjoy should not prevent them from ensuring an unrestricted freedom to provide services in their ports.
- (29) 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.
- (30) The only justification for recourse to public service obligations leading to a limitation on the number of providers of port services should be 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, the affordability of the port service to a certain category of users, the safety, security or environmental sustainability of port operations and territorial cohesion.
- (31) While public service obligations are determined and imposed by national authorities, a general obligation set by Union or national law for a port to accept any vessel physically capable of entering and mooring without discrimination or hindrance should not be understood to be a public service obligation for the purposes of this Regulation.
- (32) This Regulation should not preclude competent authorities from granting compensation for actions taken in fulfilment of the public service obligations provided that such compensation complies with the applicable State aid rules. Where public service obligations qualify as services of general economic interest, it is necessary to ensure compliance with Commission Decision 2012/21/EU⁽⁶⁾ and Commission Regulation (EU) No 360/2012⁽⁷⁾, as well as observance of the Commission's communication of 11 January 2012 entitled 'European Union framework for State aid in the form of public service compensation'.
- (33) Where there are multiple providers of port services, the managing body of the port, or the competent authority, should not discriminate between providers of port services, and especially not in favour of an undertaking or a body in which it holds an interest.
- (34) The managing body of a port, or the competent authority, should have the choice of deciding whether to provide port services itself or to entrust the provision of such services directly to an internal operator. When there is a limitation on the number of providers of port services, the provision of port services by the internal operators should

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be limited to only the port or ports for which those internal operators were designated, except where a competitive market derogation applies.

- (35) Member States should retain the power to ensure an adequate level of social protection for the staff of undertakings providing port services. This Regulation should not affect the application of the social and labour rules of the Member States. It is appropriate to clarify that in cases where Council Directive 2001/23/EC⁽⁸⁾ does not apply, where the conclusion of a port service contract entails a change of port service provider, the managing body of the port, or the competent authority, should nevertheless be able to require that the rights and obligations of the outgoing provider of port services arising from a contract of employment, or from an employment relationship, existing on the date of that change be transferred to the newly appointed port service provider.
- (36) Whenever measures provided for in this Regulation entail the processing of personal data, such processing should be carried out in accordance with the applicable Union law, and in particular Regulation (EU) 2016/679 of the European Parliament and of the Council⁽⁹⁾.
- (37) In a complex and competitive sector such as port services, initial and periodic training of staff is essential to ensure the quality of services and to protect the health and safety of port workers. Member States should therefore ensure that providers of port services provide adequate training to their employees.
- (38) In many ports, the market access for providers of cargo- handling and passenger services is granted by means of public contracts. 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 such contracts. Therefore, while Chapter II of this Regulation should not apply to the provision of cargo-handling and passenger services, Member States should remain free to decide to apply the rules of Chapter II to those two services or to keep their existing national law on market access with regard to cargo-handling and passenger services while respecting the main principles set out in the case-law of the Court of Justice.
- (39) According to Resolution A.960 of the International Maritime Organization, each pilotage area needs highly specialised experience and local knowledge on the part of the pilot. Moreover, pilotage is generally mandatory and often organised or provided by the Member States themselves. Furthermore, Directive 2009/16/EC of the European Parliament and of the Council⁽¹⁰⁾ entrusts a role to pilots in reporting to competent authorities apparent anomalies which may prejudice the safe navigation of the waterborne vessel, or which may pose a threat to or may harm the marine environment. In addition, where safety conditions allow it, it is important that all Member States encourage the use of Pilotage Exemption Certificates, or equivalent mechanisms, in order to improve efficiency in ports, in particular to stimulate short sea shipping. In order to avoid potential conflicts of interests between such public interest functions and commercial considerations, Chapter II of this Regulation should not apply to pilotage. However, Member States should remain free to decide to apply Chapter II to pilotage. If they decide to do so, the Commission should be informed accordingly, in order to ensure the distribution of relevant information.

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- (40) Without prejudice to Union competition rules, this Regulation should not interfere with the right of Member States, where applicable, to regulate charges in order to avoid over-charging of port services in cases where the situation of the market in port services is such that effective competition cannot be achieved.
- (41) 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, should be made transparent in order to ensure a level playing field and to avoid market distortions. In this respect, this Regulation should extend to other categories of addressees the principles of transparency of financial relations set out in Commission Directive 2006/111/EC⁽¹¹⁾ without prejudice to the scope of that Directive.
- (42) Rules on the transparency of financial relations need to be introduced in this Regulation to prevent unfair competition between ports in the Union, particularly since ports in the trans-European transport network are eligible to apply for Union funding through the Connecting Europe Facility established by Regulation (EU) No 1316/2013 of the European Parliament and of the Council⁽¹²⁾.
- (43) In order to ensure a level playing field and transparency in the allocation and use of public funds and to avoid market distortions, it is necessary to impose on the managing body of the port in receipt of public funds, when it is also acting as a service provider, an obligation to keep accounts for publicly funded activities carried out in its capacity as managing body of the port separate from accounts for activities carried out on a competitive basis. In any event, compliance with State aid rules should be ensured.
- (44) With a view to ensuring transparency, when a port or another entity provides dredging within a port area, the accounts for dredging should be kept separate from those for other activities.
- (45) Without prejudice to Union law and to the prerogatives of the Commission, it is important that the Commission identify, in a timely manner and in consultation with all interested parties, which public investments in port infrastructure fall within the scope of Commission Regulation (EU) No 651/2014⁽¹³⁾ (General Block Exemption Regulation), and which infrastructure does not fall under the scope of State aid, taking into consideration the non-economic nature of certain infrastructure, including access and defence infrastructure, provided that they are accessible to all potential users on equal and non-discriminatory terms.
- (46) Port service charges applied by providers of port services under public service obligations and the charges for pilotage services which are not exposed to effective competition might entail a higher risk of price abuse in cases where monopoly power exists. For those services, arrangements should be established to ensure that the charges are set in a transparent, objective and non-discriminatory way and are proportionate to the cost of the service provided.
- (47) In order to be efficient, the port infrastructure charges of each individual port should be set in a transparent way in accordance with the port's own commercial strategy and investment plans and, where relevant, with the general requirements laid down within the framework of the general ports policy of the Member State concerned.

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- (48) This Regulation should not affect the rights, where applicable, of the ports and their customers to agree commercially confidential discounts. This Regulation is not intended to require the disclosure to the public or to third parties of any such discounts. However, the managing body of the port, or the competent authority, should at least publish standard charges before any price differentiation.
- (49) The variation of port infrastructure charges should be allowed in order to promote short sea shipping and to attract waterborne vessels which have an environmental performance, energy efficiency or carbon efficiency of transport operations, in particular offshore or onshore maritime transport operations, that is better than average. That should help to contribute to the attainment of environmental and climate change policy goals and the sustainable development of the port and its surroundings, in particular by contributing to the reduction of the environmental footprint of the waterborne vessels calling and staying in the port.
- (50) Depending on the economic strategy of the port, port spatial planning policy or port commercial practices and, where relevant, the general ports policy of the Member State concerned, the variation of port infrastructure charges may result in rates being set at zero for certain categories of users. Such categories of users could include, among others, hospital ships, vessels in scientific, cultural or humanitarian missions, tugs and floating service equipment of the port.
- (51) The Commission, in cooperation with Member States, should elaborate guidance on common classification criteria for vessels for the purpose of voluntary environmental charging, taking into account internationally agreed standards.
- (52) It is necessary to ensure that port users and other stakeholders be consulted on essential issues related to the sound development of the port, its charging policy, its performance and its capacity to attract and generate economic activities. Such essential issues include the coordination of port services within the port area, the efficiency of the connections with the hinterland and the efficiency of the administrative procedures in ports, as well as environmental issues. Such consultations should be without prejudice to any other specific competence related to those issues, as well as to the possibility for Member States to hold those consultations at a national level. The managing body of the port should in particular consult port users and other relevant stakeholders regarding port development plans.
- (53) In order to ensure the proper and effective application of this Regulation, Member States should ensure that an effective procedure is in place to handle complaints.
- (54) Member States' authorities should cooperate when handling complaints in disputes involving parties established in different Member States and should exchange general information on the handling of complaints in order to facilitate a uniform application of this Regulation.
- (55) Since the objectives of this Regulation, namely ensuring a framework for the provision of port services as well as an appropriate framework to attract necessary investments in all the maritime ports of the trans-European transport network, cannot be sufficiently achieved by the Member States because of the European dimension or the international

and cross-border nature of port and related maritime business, but can rather, 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.

- (56) The EU Sectoral Social Dialogue Committee in the Port Sector provides the social partners with a framework to develop a joint approach to the social challenges related to port labour relations, including working conditions, health and safety questions, training requirements and professional qualifications. That framework should be developed in particular, in the light of market-based and technological developments, and should enhance the attractiveness of the sector for young workers and female workers, while taking into consideration the importance of safeguarding the competitiveness of European maritime ports and promoting good working conditions. With full respect for the autonomy of the social partners and taking into account technological progress and advances in transport logistics, the EU Sectoral Social Dialogue Committee in the Port Sector is invited to develop guidelines on the development of training requirements in order to prevent accidents in the workplace and to ensure the highest level of health and safety for port workers. Social partners should also explore different models for the organisation of maritime port labour that secure quality jobs and safe working conditions and that address fluctuations in the demand for port work. It is important that the Commission support and facilitate the work of the EU Sectoral Social Dialogue Committee in the Port Sector.
- (57) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

- 1 This Regulation establishes:
 - a a framework for the provision of port services;
 - b common rules on financial transparency and on port service and port infrastructure charges.
- 2 This Regulation applies to the provision of the following categories of port services ('port services'), either inside the port area or on the waterway access to the port:
 - a bunkering;
 - b cargo-handling;
 - c mooring;

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- d passenger services;
- e collection of ship-generated waste and cargo residues;
- f pilotage; and
- g towage.

3 Article 11(2) also applies to dredging.

4 This Regulation applies to all maritime ports of the trans-European transport network, as listed in Annex II to Regulation (EU) No 1315/2013.

5 Member States may decide not to apply this Regulation to maritime ports of the comprehensive network located in the outermost regions referred to in Article 349 of the Treaty on the Functioning of the European Union. Where Member States decide not to apply this Regulation to such maritime ports, they shall notify such decision to the Commission.

6 Member States may also apply this Regulation to other maritime ports. Where Member States decide to apply this Regulation to other maritime ports, they shall notify their decision to the Commission.

7 This Regulation is without prejudice to Directives 2014/23/EU⁽¹⁴⁾ and 2014/24/EU⁽¹⁵⁾ of the European Parliament and of the Council and Directive 2014/25/EU.

Article 2

Definitions

For the purposes of this Regulation:

- (1) ‘bunkering’ means the provision of solid, liquid or gaseous fuel or of 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’ means the organisation and handling of cargo between the carrying waterborne vessel and the shore, whether it be for import, export or transit of the cargo, including the processing, lashing, unlashng, stowing, transporting and temporary storage of the cargo on the relevant cargo-handling terminal and directly related to the transporting of the cargo, but excluding, unless the Member State determines otherwise, warehousing, stripping, repackaging or any other value added services related to the cargo;
- (3) ‘competent authority’ means any public or private body which, on behalf of a local, regional or national level, is entitled to carry out, under national law or instruments, activities related to the organisation and administration of port activities, in conjunction with or instead of the managing body of the port;
- (4) ‘dredging’ means the removal of sand, sediment or other substances from the bottom of the waterway access to the port, or within the port area that falls within the competence of the managing body of the port, including the disposal of the removed materials, in order to allow waterborne vessels to have access to the port; it comprises both the initial removal (capital dredging) and the maintenance dredging carried out in order to keep the waterway accessible, whilst not being a port service offered to the user;
- (5) ‘managing body of the port’ means any public or private body which, under national law or instruments, has the objective of carrying out, or is empowered to carry out,

at a local level, whether in conjunction with other activities or not, the administration and management of the port infrastructure and one or more of the following tasks in the port concerned: the coordination of port traffic, the management of port traffic, the coordination of the activities of the operators present in the port concerned, and the control of the activities of the operators present in the port concerned;

- (6) ‘mooring’ means the berthing and unberthing services, including shifting along the quayside, that are required for the safe operation of a waterborne vessel in the port or in the waterway access to the port;
- (7) ‘passenger services’ means the organisation and handling of passengers, their luggage and their vehicles between the carrying waterborne vessel and the shore, and also includes the processing of personal data and the transport of 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 safe entry or exit of the waterborne vessel in the waterway access to the port or safe navigation within the port;
- (9) ‘port infrastructure charge’ means a charge levied, for the direct or indirect benefit of the managing body of the port or of the competent authority, for the use of infrastructure, facilities and services, including the waterway access to the port concerned, as well as access to the processing of passengers and cargo, but excluding land lease rates and charges having equivalent effect;
- (10) ‘collection of ship-generated waste and cargo residues’ means the reception of ship-generated waste and cargo residues by 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⁽¹⁶⁾;
- (11) ‘port service charge’ means a charge levied 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 or an act of equivalent legal effect between a provider of port services and a managing body of the port, or a competent authority, having as its subject-matter the provision of one or more port services, without prejudice to the form of designating 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;
- (14) ‘public service obligation’ means a requirement defined or determined in order to ensure the provision of those port services or activities of 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;
- (16) ‘maritime port’ means an area of land and water made up of such infrastructure and equipment so as to permit, principally, the reception of waterborne vessels, their loading and unloading, the storage of goods, the receipt and delivery of those goods and the embarkation and disembarkation of passengers, crew and other persons and any other infrastructure necessary for transport operators within the port area;

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- (17) ‘towage’ means the assistance given to a waterborne vessel by means of a tug in order to allow for a safe entry or exit of the port or safe navigation within the port by providing assistance to the manoeuvring of the waterborne vessel;
- (18) ‘waterway access’ means water access to the port from the open sea, such as port approaches, fairways, rivers, sea canals and fjords, provided that such waterway falls within the competence of the managing body of the port.

CHAPTER II

PROVISION OF PORT SERVICES

Article 3

Organisation of port services

1 Access to the market for the provision of port services in maritime ports may, in accordance with this Regulation, be subject to:

- a minimum requirements for the provision of port services;
- b limitations on the number of providers;
- c public service obligations;
- d restrictions related to internal operators.

2 Member States may decide by national law not to impose any of the conditions referred to in paragraph 1 on one or more categories of port services.

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

Article 4

Minimum requirements for the provision of port services

1 The managing body of the port, or the competent authority, may require providers of port services, including subcontractors, to comply with minimum requirements for the performance of the corresponding port service.

2 The minimum requirements provided for in paragraph 1 may only relate to:

- a the professional qualifications of the provider of port services, its personnel or the natural persons who actually and continuously manage the activities of the provider of port services;
- b the financial capacity of the provider of port services;
- c the equipment needed to provide the relevant port service in normal and safe conditions and the capacity to maintain this equipment at the required level;
- d the availability of the relevant port service to all users, at all berths and without interruptions, day and night, throughout the year;
- e 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;
- f compliance with local, national, Union and international environmental requirements;

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- g 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;
- h the good repute of the port service provider, as determined in accordance with any applicable national law on good repute, taking into consideration any compelling grounds to doubt the reliability of the provider of port services.

3 Without prejudice to paragraph 4, where a Member State deems that it is necessary to impose a flag requirement in order to ensure full compliance with point (g) of paragraph 2 for waterborne vessels predominantly used for towage or mooring operations in ports located on its territory, it shall inform the Commission of its decision prior to the publication of the contract notice or, in the absence of a contract notice, prior to imposing a flag requirement.

4 The minimum requirements shall:

- a be transparent, objective, non-discriminatory, proportionate, and relevant to the category and nature of the port service concerned;
- b be complied with until the right to provide a port service expires.

5 Where the minimum requirements include specific knowledge of local conditions, the managing body of the port, or the competent authority, shall ensure that there is adequate access to information, under transparent and non-discriminatory conditions.

6 In the cases provided for in paragraph 1, the managing body of the port, or the competent authority, shall publish the minimum requirements referred to in paragraph 2 and the procedure for the granting of the right to provide port services under those requirements by 24 March 2019 or, in the case of minimum requirements that are to apply after that date, at least three months before the date from which those requirements are to apply. The managing body of the port, or the competent authority, shall, in advance, inform providers of port services of any change in the criteria and of the procedure.

7 This Article applies without prejudice to Article 7.

Article 5

Procedure to ensure compliance with the minimum requirements

1 The managing body of the port, or the competent authority, shall treat providers of port services in a transparent, objective, non-discriminatory and proportionate manner.

2 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 established in accordance with Article 4 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.

3 Any such refusal, by the managing body of the port, or by the competent authority, shall be duly justified on the basis of the minimum requirements set out in Article 4(2).

4 Any limitation or termination by the managing body of the port, or the competent authority, of the right to provide a port service shall be duly justified and shall be in accordance with paragraph 1.

Status: Point in time view as at 31/01/2020.

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Article 6

Limitations on the number of providers of port services

1 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:

- a the scarcity or reserved use of land or waterside space, provided that the limitation is in accordance with the decisions or plans agreed by the managing body of the port and, where appropriate, any other public authorities competent in accordance with the national law;
- b the absence of such a limitation is obstructing the performance of public service obligations as provided for in Article 7, including when such absence leads to excessively high costs related to the performance of such obligations for the managing body of the port, the competent authority, or the port users;
- c the absence of such a limitation runs counter to the need to ensure safe, secure or environmentally sustainable port operations;
- d 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;
- e where it has been established pursuant to Article 35 of Directive 2014/25/EU that a port sector or subsector, together with its port services, within a Member State carries out an activity that is directly exposed to competition in accordance with Article 34 of that Directive. In such cases, paragraphs 2 and 3 of this Article shall not apply.

2 In order to give interested parties the opportunity to submit comments within a reasonable period, the managing body of the port, or the competent authority, shall publish any proposal to limit the number of providers of port services in accordance with paragraph 1 together with the grounds justifying it at least three months in advance of the adoption of the decision to limit the number of providers of port services.

3 The managing body of the port, or the competent authority, shall publish the adopted decision to limit the number of providers of port services.

4 Where the managing body of the port, or the competent authority, 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. The managing body of the port, or the competent authority, shall publish information on the port service to be provided and on the selection procedure, and shall ensure that all essential information that is necessary for the preparation of their applications is effectively accessible to all interested parties. Interested parties shall be given long enough to allow them to make a meaningful assessment and prepare their applications. In normal circumstances, the minimum such period shall be 30 days.

5 Paragraph 4 shall not apply in the cases referred to in point (e) of paragraph 1 and in paragraph 7 of this Article and in Article 8.

6 Where the managing body of a port, or the competent authority, provides port services either itself or through a legally distinct entity which it directly or indirectly controls, the Member State concerned shall take such measures as are necessary to avoid conflicts of interests. In the absence of such measures, the number of providers shall not be fewer than two, unless one or more of the reasons listed in paragraph 1 justifies a limitation on the number of providers of port services to a single provider.

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7 Member States may decide that their ports of the comprehensive network which do not meet the criteria in point (b) of Article 20(2) of Regulation (EU) No 1315/2013 may limit the number of service providers for a given port service. Member States shall inform the Commission of such a decision.

Article 7

Public service obligations

1 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:

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

2 The public service obligations referred to in paragraph 1 shall be clearly defined, transparent, non-discriminatory and verifiable, and shall guarantee equality of access to all providers of port services established in the Union.

3 Where a Member State decides to impose public service obligations for the same service in all its maritime ports covered by this Regulation, it shall notify those obligations to the Commission.

4 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 managing body of the port, or 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 of up to two years. During that period, the managing body of the port, or the competent authority, shall either launch a new procedure to select a provider of port services or shall apply Article 8. Collective industrial action that takes place in accordance with national law shall not be considered a disruption of port services for which an emergency measure may be taken.

Article 8

Internal operator

1 Without prejudice to Article 6(6), the managing body of the port, or the competent authority, may decide either to provide a port service itself or to do so through a legally distinct entity over which it exercises a degree of control similar to that which it has over its own departments, provided that Article 4 applies equally to all operators providing the port service concerned. In such a case, the provider of port services shall be considered to be an internal operator for the purpose of this Regulation.

2 The managing body of the port, or the competent authority, shall be considered to be exercising a degree of control over a legally distinct entity similar to that which it has over its

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own departments only if it has a decisive influence over both the strategic objectives and the significant decisions of the legal entity concerned.

3 In the cases provided for in points (a) to (d) of Article 6(1), the internal operator shall be limited to performing the assigned port service only in the port or ports attributed to it in the assignment to provide the port service.

Article 9

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 Union and national law, including applicable collective agreements between social partners, 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.

3 In the case of a change of provider of port services that is due to the award of a concession or public contract, the managing body of the port, or the competent authority, may require that the rights and obligations of the outgoing provider of port services arising from a contract of employment, or from an employment relationship as defined in national law, and existing on the date of that change, be transferred to the newly appointed provider of port services. In such a case, the staff previously taken on by the outgoing provider of port services shall be granted the same rights as those to which they would have been entitled if there had been a transfer of undertaking within the meaning of Directive 2001/23/EC.

4 Where, in the context of the provision of port services, a transfer of staff occurs, 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 10

Exemptions

1 This Chapter and Article 21 shall not apply to cargo-handling, passenger services or pilotage.

2 Member States may decide to apply this Chapter and Article 21 to pilotage. Member States shall inform the Commission of such a decision.

CHAPTER III

FINANCIAL TRANSPARENCY AND AUTONOMY

Article 11

Transparency of financial relations

1 The financial relations between public authorities and a managing body of a port, or other entity that provides port services on its behalf, in receipt of public funds shall be reflected in a transparent way in the accounting system 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 for which those public funds have been attributed.

2 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 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 and quasi-capital funds, non-refundable grants, grants only refundable in certain circumstances, loans including overdrafts and advances on capital injections, guarantees given to the managing body of the port by public authorities and any other form of public financial support.

4 The managing body of the port, or other entity that provides port services on its behalf, shall keep the information concerning the financial relations as referred to in paragraphs 1 and 2 for five years from the end of the fiscal year to which the information refers.

5 The managing body of the port, or other entity that provides port services on its behalf, shall, in the event of a formal complaint and upon request, make available to the relevant authority in the Member State concerned the information referred to in paragraphs 1 and 2 and any additional information that it deems necessary in order to complete a thorough appraisal of the data submitted and to assess compliance with this Regulation in accordance with competition rules. Such information shall be made available to the Commission by the relevant authority upon request. The information shall be transmitted within three months from the date of the request.

6 Where the managing body of the port, or other entity that provides port services on its behalf, has not received public funds in previous accounting years but starts benefitting from public funds, it shall apply paragraphs 1 and 2 from the accounting year following the transfer of the public funds.

7 Where public funds are paid as 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.

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8 Member States may decide that paragraph 2 of this Article shall not apply to those of their ports of the comprehensive network which do not meet the criteria set out in point (b) of Article 20(2) of Regulation (EU) No 1315/2013 where this results in disproportionate administrative burdens, provided that any public funds received, and their use for providing port services, remain fully transparent in the accounting system. Member States shall inform the Commission in advance of such a decision.

Article 12

Port service charges

1 The charges for the services provided by an internal operator under a public service obligation, the charges for pilotage services that are not exposed to effective competition and the charges levied by providers of port services, referred to in point (b) of Article 6(1), shall be set in a transparent, objective and non-discriminatory way, and shall be proportionate to the cost of the service provided.

2 The payment of the port service charges may be integrated into other payments, such as the payment of the port infrastructure charges. In such a case, the provider of port services 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 provider of port services shall, in the event of a formal complaint and upon request, make available to the relevant authority in the Member State concerned any relevant information on the elements that serve as the basis for determining the structure and the level of the port service charges that fall under paragraph 1.

Article 13

Port infrastructure charges

1 Member States shall ensure that a port infrastructure charge is levied. This shall not prevent providers of port services which are using the port infrastructure from levying port service charges.

2 The payment of the port infrastructure charges may be integrated into other payments, such as the payment of the port service charges. In such a 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 determined according to the port's own commercial strategy and investment plans, and shall comply with competition rules. Where relevant, such charges shall also respect the general requirements set within the framework of the general ports policy of the Member State concerned.

4 Without prejudice to paragraph 3, 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, 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 for such a variation shall be transparent, objective and non-discriminatory, and shall be consistent with competition law, including rules on State aid.

Port infrastructure charges may take into account external costs and may vary depending on commercial practices.

5 The managing body of the port, or the competent authority, shall ensure that port users and the representatives or associations of port users are informed about the nature and level of the port infrastructure charges. The managing body of the port, or the competent authority, shall ensure that users of the port infrastructure are informed of any changes in the nature or level of the port infrastructure charges at least two months in advance of the date on which those changes come into effect. The managing body of the port, or the competent authority, shall not be required to disclose differentiations in the charges that are the result of individual negotiations.

6 The managing body of the port shall, in the event of a formal complaint and upon request, make available to the relevant authority of the Member State concerned the information referred to in paragraphs 4 and 5, and any relevant information on the elements that serve as a basis for determining the structure and the level of the port infrastructure charges. That authority shall make the information available to the Commission upon request.

CHAPTER IV

GENERAL AND FINAL PROVISIONS

Article 14

Training of staff

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.

Article 15

Consultation of port users and other stakeholders

1 The managing body of the port shall, in accordance with applicable national law, consult port users on its charging policy, including in cases covered by Article 8. 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.

2 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:

- a the coordination of port services within the port area;
- b measures to improve connections with the hinterland, including measures to develop and improve the efficiency of rail and inland waterways transport;
- c the efficiency of administrative procedures in the port and measures to simplify them;
- d environmental matters;
- e spatial planning; and
- f measures to ensure safety in the port area, including, where appropriate, health and safety of port workers.

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

4 The managing body of the port and providers of port services shall respect the confidentiality of commercially sensitive information when carrying out their obligations under this Article.

Article 16

Handling of complaints

1 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.

2 The handling of complaints shall be carried out in a manner which avoids conflicts of interest and which is functionally independent of any managing body of the port or providers of port services. 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. The handling of complaints shall be impartial and transparent, and shall duly respect the right to freely conduct business.

3 Complaints shall be filed in the Member State of the port where the dispute is presumed to have its origin. Member States shall ensure that port users and other relevant stakeholders are informed of where and how to lodge a complaint and which authorities are responsible for handling complaints.

4 The authorities responsible for handling complaints shall, where appropriate, cooperate for the purposes of mutual assistance in disputes involving parties established in different Member States.

5 The authorities responsible for the handling of complaints shall, in accordance with national law, have the power to require managing bodies of the ports, providers of port services and port users to provide them with information relevant to a complaint.

6 The authorities responsible for the handling of complaints shall, in accordance with national law, have the power to take decisions that have binding effect, subject to judicial review, where applicable.

7 Member States shall inform the Commission of the procedure for the handling of complaints and of the authorities referred to in paragraph 3 by 24 March 2019 and, subsequently, of any changes to that information. The Commission shall publish and regularly update such information on its website.

8 Member States shall, where appropriate, exchange general information about the application of this Article. The Commission shall support such cooperation.

Article 17

Relevant authorities

Member States shall ensure that port users and other relevant stakeholders are informed of the relevant authorities referred to in Articles 11(5), 12(3) and 13(6). Member States shall also inform the Commission of those authorities by 24 March 2019 and,

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subsequently, of any changes to that information. The Commission shall publish and regularly update such information on its website.

Article 18

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 managing body of the port, the competent authority, or any other relevant national authority. Appeal bodies shall be independent of the parties involved and may be courts.

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 19

Penalties

Member States shall lay down the rules on penalties applicable to infringements 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 measures to the Commission by 24 March 2019 and shall without delay notify it of any subsequent amendment affecting them.

Article 20

Report

The Commission shall, no later than 24 March 2023, submit a report to the European Parliament and the Council on the functioning and effect of this Regulation.

That report shall take into account any progress made in the framework of the EU Sectoral Social Dialogue Committee in the Port Sector.

Article 21

Transitional measures

1 This Regulation shall not apply to port service contracts which were concluded before 15 February 2017 and are limited in time.

2 Port service contracts concluded before 15 February 2017 which are not limited in time, or have similar effects, shall be amended in order to comply with this Regulation by 1 July 2025.

Status: Point in time view as at 31/01/2020.

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Article 22

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 from 24 March 2019.

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

Done at Strasbourg, 15 February 2017.

For the European Parliament

The President

A. TAJANI

For the Council

The President

I. BORG

Status: Point in time view as at 31/01/2020.

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- (1) [OJ C 327, 12.11.2013, p. 111.](#)
- (2) [OJ C 114, 15.4.2014, p. 57.](#)
- (3) Position of the European Parliament of 14 December 2016 (not yet published in the Official Journal) and decision of the Council of 23 January 2017.
- (4) Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU ([OJ L 348, 20.12.2013, p. 1.](#))
- (5) Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC ([OJ L 94, 28.3.2014, p. 243.](#))
- (6) Commission Decision 2012/21/EU of 20 December 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 ([OJ L 7, 11.1.2012, p. 3.](#))
- (7) 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 ([OJ L 114, 26.4.2012, p. 8.](#))
- (8) Council Directive 2001/23/EC of 12 March 2001 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 ([OJ L 82, 22.3.2001, p. 16.](#))
- (9) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) ([OJ L 119, 4.5.2016, p. 1.](#))
- (10) Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control ([OJ L 131, 28.5.2009, p. 57.](#))
- (11) Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings ([OJ L 318, 17.11.2006, p. 17.](#))
- (12) Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010 ([OJ L 348, 20.12.2013, p. 129.](#))
- (13) Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty ([OJ L 187, 26.6.2014, p. 1.](#))
- (14) Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts ([OJ L 94, 28.3.2014, p. 1.](#))
- (15) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC ([OJ L 94, 28.3.2014, p. 65.](#))
- (16) Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues ([OJ L 332, 28.12.2000, p. 81.](#))

Status:

Point in time view as at 31/01/2020.

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