

The liberalisation of EU port services

SUMMARY

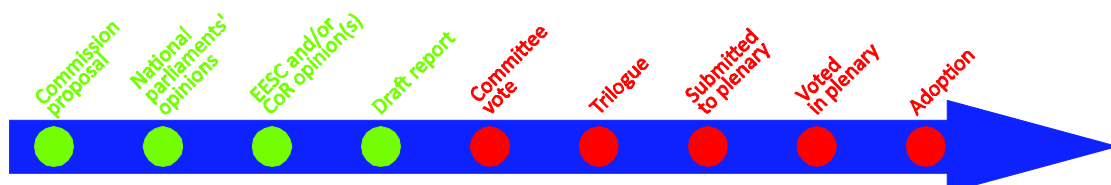
Serving as access points to Europe, the European Union's approximately 1 200 seaports are crucial both for its transport sector and its competitiveness. They also have significant potential for creating jobs and attracting investors.

The European Commission plans to redress the huge disparities in performance levels by modernising the port services offered by the EU's 329 main seaports. The reform is aimed at eliminating unfair competition, guaranteeing a level playing field and improving the commercial efficiency of ports. Two previous attempts to liberalise port services (in 2001 and 2004) provoked controversy, particularly regarding their social/labour market aspects, and were rejected by the European Parliament.

The latest initiative combines a legislative and a 'soft' approach. The previously contentious cargo handling and passenger services will not be opened up to the market through legislation. Instead, the Commission is focusing on establishing a clear framework for market access to port services and common rules on the transparency of public funding for ports and the charges for users. The 'soft' approach comprises an action plan and the launch of sectoral social dialogue.

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

<i>Committee responsible:</i>	Transport and Tourism (TRAN)	COM(2013)0296 of 23.05.2013
<i>Rapporteur:</i>	Knut Fleckenstein (S&D, Germany)	<i>procedure ref.:</i> 2013/0157(COD)
<i>Next steps expected:</i>	Vote in committee	Ordinary legislative procedure



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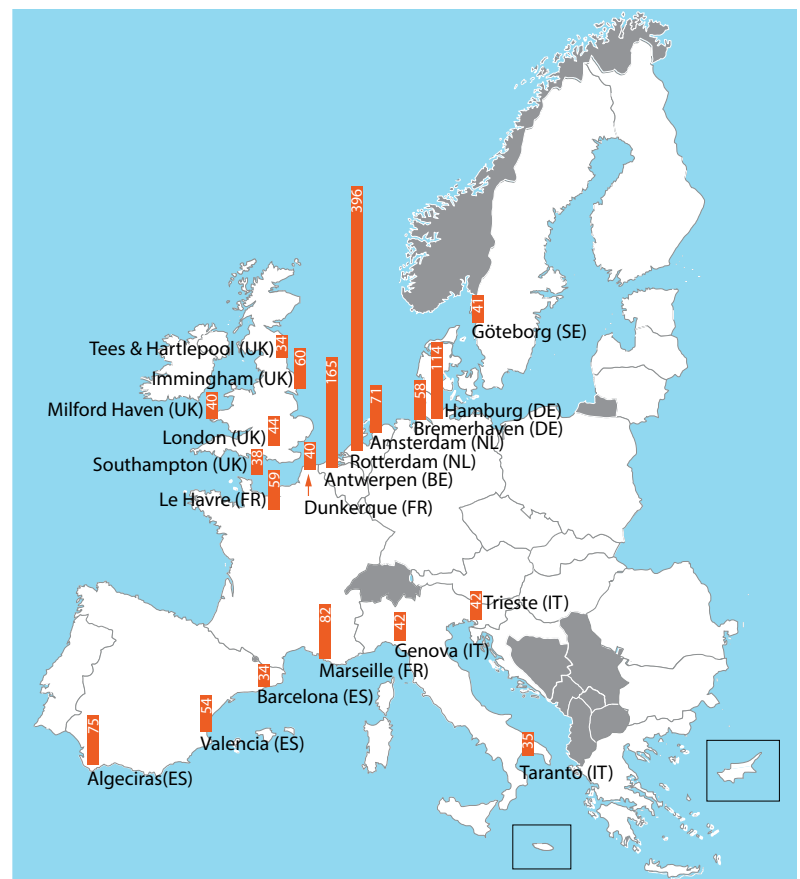
Introduction

Seaports are fundamental to the economy of the European Union (EU), enabling the transit of some 74% of imports and exports of cargo and 37% of EU [trade](#). They also play an important role in the Union's territorial continuity, linking islands and peripheral areas with the mainland. They vary in size, location, organisation and type, making up a very heterogeneous sector. They also differ in performance and connectivity to intermodal transport routes.

Some 96% of all freight and 93% of passengers passing through EU ports [transits](#) through the EU's [329](#) main seaports, identified by the European Commission in the guidelines on the trans-European transport network ([TEN-T](#)) as essential to the functioning of the internal market. According to the Commission, to perform well as an integrated network industry, these ports need to resolve several challenges, one of which is the development of hinterland connections. This issue is addressed by the TEN-T [policy and financing](#), which provides for substantial funding support for ports. Other important issues include improving the quality of port services and operations, seen as sub-optimal in some TEN-T seaports, and making port governance frameworks more attractive for investments.

In 2013, the Commission presented a new package of measures designed to modernise port services. It consists of a [communication](#) including an action plan and a [proposal for a regulation](#) meant to improve efficiency and transparency of port services in the EU and enhance competition in the sector. The objective of the regulation is to establish freedom to provide port services (market access), assure financial transparency of public funding to ports and encourage investment.

Figure 1 - The EU's 20 main cargo ports (in million tonnes, 2011)



Data source: [Impact assessment](#), European Commission, 2013.

Context

With more than 1 200 seaports operating along some 70 000 kilometres of coastline, Europe is one of the densest port regions worldwide. The port sector brings together a broad range of industries, such as petrochemicals, steel, automotive, manufacturing and energy distribution. Ports are also central to the economic activity of maritime businesses such as naval shipyards, marine equipment companies, crane and terminal equipment manufacturers, marine rescue organisations, coastal companies, marine construction firms, dredging companies and naval bases.

In the 23 Member States with a coastline, ports [employ](#), directly or indirectly, more than three million people.¹ In [2013](#), about 400 million passengers and 3.7 billion tonnes of cargo passed through EU ports.

However, there is a considerable imbalance between the volumes handled in the north and south of the EU. In 2012, the three largest EU ports – Rotterdam, Hamburg and Antwerp – accounted for about [20%](#) of cargo movements alone (still a long way behind Chinese ports which top world [rankings](#), see Table 2). This is [partly due](#) to north-west Europe's proximity to major production and consumption markets. In contrast, the combined activity of the nine largest Mediterranean EU ports comprised less than 15% of total cargo movements. Efficiency and productivity vary greatly between EU ports and, according to the [Commission](#), the gap has grown even wider in recent years. These performance deficits have caused several problems, including longer journeys by land and sea, increased CO₂ emissions, owing, in particular, to road transport in the hinterland and to congestion risks that harm both individuals and the economy. As maritime transport [costs](#) are relatively low, [forecasts](#) – in a low-growth scenario – are for the volume of cargo transiting through EU ports to increase by 50% by 2030. Efficient ports can better distribute cargo flows in preparation for the significant growth forecast.

Table 2 - World port rankings, 2013

Total cargo volume Thousand tonnes				Container traffic TEUs - twenty-foot equivalent units			
Rank	Port	Country	Tonnes*	Rank	Port	Country	TEUs
1	Shanghai	China	696 985	1	Shanghai	China	33 617 000
2	Singapore	Singapore	560 888	2	Singapore	Singapore	32 578 700
3	Tianjin	China	477 339	3	Shenzhen	China	23 278 000
6	Rotterdam	Netherlands	440 464	11	Rotterdam	Netherlands	11 664 195
18	Antwerp	Belgium	190 849	15	Hamburg	Germany	9 257 358
25	Hamburg	Germany	139 050	16	Antwerp	Belgium	8 578 269

Data source: [American Association of Port Authorities](#), 2013.

* Due to differences in measurement methods, the tonnages for individual ports should be compared with caution.

Existing situation

The current proposal comes after **two unsuccessful attempts** at liberalisation. After its 1997 [Green Paper](#), which was the first step towards a harmonised port policy, the Commission published a [communication](#) on reinforcing service quality in seaports in 2001, accompanied by a [proposal for a directive](#) on market access to port services. Faced with strong opposition from port service providers, the negotiations were extremely tough. After almost three years, Parliament rejected the proposal.

In 2004, the Commission submitted a [new proposal for a directive](#) on market access to port services. In addition to the objectives it had set in the first proposal, it now aspired to make port authorities bring greater transparency into their accounts, revenue allocations (especially state aid) and expenditure. However, as the proposal drew strongly divergent reactions in the [debates](#) in plenary, Parliament ultimately rejected it in 2006, prompting the Commission to withdraw it.

In its 2007 communication on [European ports policy](#), the Commission identified the major challenges for the sector and outlined the issues posing a threat to port performance (e.g. unsatisfactory terminal layout, inefficient access from sea or land, lengthy and costly administrative formalities) and hinterland connections. The need to modernise ports while preserving the environment, the lack of transparency in the use of public financing, market access restrictions and the way work in the ports is organised were also among the issues raised by the Commission. To find a solution, it applied horizontal instruments and soft measures on port service market access and financial transparency. In 2013, despite recognising that some progress had been achieved, the Commission [concluded](#) that the problems identified in 2007 remained relevant and the soft measures 'have had little or no impact'.

In its communication from 2013 – the latest thus far – '[Ports: an engine for growth](#)', the Commission identified a number of recent maritime transport trends, which often require significant **upgrades of port infrastructure**. First, the size and complexity of seagoing vessels have increased considerably, especially with the advent of ultra-large container ships, new types of roll-on/roll-off vessels for wheeled cargo (Ro-Ro) and gas carriers. Larger ships require greater peak capacities² when unloading cargo or embarking a higher number of passengers. Second, key developments in energy exchanges towards substituting oil and refined products with gas and alternative fuels, such as liquefied natural gas ([LNG](#)), have made it necessary to equip ports with large gasification facilities and shore-side electricity supply.³

In addition, ports can serve as an access point for trafficked drugs and weapons, contraband goods and even chemical, biological, radiological and nuclear materials. Port security thus requires the utmost vigilance and is governed by strict EU legislation,⁴ which has a partial impact on port services.

Compared to other transport modes, shipping is disadvantaged by the fact that ships leaving a Member State's territorial waters (12 nautical miles from shore) are considered as moving out of the EU customs territory, which means that goods have to go through customs formalities both on departure and arrival at EU ports, resulting in delays and higher costs. The Commission's 2013 communication '[Blue belt, a single transport area for shipping](#)' set out to **simplify administrative and customs formalities**.

Directive [2014/23/EU](#) introduced common standards for **awarding concession contracts**, giving public authorities the opportunity to focus more on quality and social and environmental considerations, while still keeping an eye on price. The Directive also applies to concession contracts awarded in ports, with some exceptions such as property leases. This [means](#) that public land-lease contracts in favour of particular operators – often practised in ports – are not covered by the obligation of transparency, which may potentially lead to double standards in ports.

In 2012, the European Court of Auditors [identified problems in planning and allocation of public resources](#) from structural and cohesion funds for port infrastructure,

concluding that port projects have only limited added value if they are not connected as multimodal nodes to transport networks.

However, the major unresolved issue for the sector remain [state aid rules](#) for the public funding of port infrastructure. Having repeatedly asked for clarification on how these rules are applied, the sector is awaiting Commission guidelines, as well as the outcome of the [revision](#) of the 'General Block Exemption Regulation' ([651/2014/EU](#)). This regulation defines cases when state aid can be granted to companies without prior notification to the Commission. However, port infrastructure is currently not included therein, which makes all planned measures subject to the Commission's scrutiny. Having clear rules on public financing became all the more urgent when new sources of TEN-T financing from the Connecting Europe Facility ([CEF](#)) were made available in [2015](#).

The changes the proposal would bring

The 2013 [proposal for a regulation](#) attempts to eliminate unfair competition, guarantee a level playing field and improve commercial efficiency of ports through increased competition.

First, it seeks to create a clear framework for access to the market of port services, and second, establish common rules on the financial transparency and charges to be applied by managing bodies or providers of port services. It should apply to the TEN-T seaports, but Member States may extend its application to other seaports.

New rules are designed to ensure **financial transparency** of eight port services⁵ and open the **market access** to six of them. Cargo handling and passenger services are exempt from the market access provisions, but fall under the regulatory framework of the [Directive on concessions](#). The six remaining services are opened to the market; however, a port managing body may cite the scarcity of land and public service obligations⁶ to limit the number of providers of a service and to impose minimum requirements on them.⁷

Port authorities will have the **autonomy** to set port infrastructure charges, provided this is done transparently. However, the Commission can set common charging principles for port infrastructure charges by means of **delegated acts**.

The proposal also aims to increase **transparency over the use of public funds**. The port authorities will not be required to publish detailed accounts, but they will have to be able to provide this information to the national and EU monitoring authorities.

In every port, a **port users' advisory committee** should be set up and consulted on the structure and level of port charges. Also, **port stakeholders** should be consulted on issues related to the coordination of port services, hinterland connections and administrative procedures. Monitoring and supervision should be carried out by an **independent supervisory body**, while these bodies should exchange information and practices among themselves.

The regulation would **not affect the social and labour rules** of the Member States. As the last two attempts at liberalisation (2001 and 2004) failed mainly on account of the [social component](#), in particular their impact on dockers' work, the Commission has this time opted for a non-legislative approach to the social component and the promotion of discussions. In [June 2013](#), it [launched](#) a **European social dialogue on ports**, bringing together representatives of employees and employers⁸ to jointly address topics such as: [training and qualifications](#), health and safety at work, attractiveness of the sector to

young workers and promotion of [female employment](#). The Commission plans to review the social dialogue in [2016](#) and assess the progress made.

The Commission estimates that by 2030, the regulation would enable the EU to save almost [€10 billion](#), lower port costs by almost 7 % and create around 70 000 new jobs as a direct result of the predicted increase in port activity. A transition period lasting until 2025 is planned for currently valid contracts.

Preparation of the proposal

In 2013, on the Commission's request, consultancy firm Panteia and advisory firm PwC prepared an economic [study](#) on the quality and efficiency of EU port services. Interested parties were consulted through two online surveys, a conference and a hearing. Among the principal issues raised was the need for a level playing field; legal certainty and a business-friendly environment; unfair competition due to public funding practices; the capacity of port authorities to conclude contracts; and port labour regimes. All respondents wished to secure more funding and agreed that EU ports need to evolve and adapt in terms of competition with ports in third countries, creation of added value and jobs as well as coping with environmental impacts.

The Commission has also carried out an ex-post evaluation of the EU ports policy, published together with an [impact assessment](#) of the proposed regulation.

Parliament's starting position

The Parliament has rejected the previous two proposals of a service liberalisation directive. In [2003](#), the most contested issue was the definition of 'self-handling', allowing workers from boats to carry out loading in ports, which, it was argued, might both degrade safety conditions in EU docks and push professional dockers out of work. The [2006](#) vote was mostly motivated by differing views on market access.

Stakeholders' views

When the proposal was announced, the **European Community Shipowners' Associations** (ECSA) [regretted](#) that port labour, passenger services and cargo handling are excluded from the future regulation. More recently, this trade association [voiced](#) its fear that the Council and Parliament are watering down the Commission's proposal and turning the port reform into 'little more than an empty shell'. ECSA asked Member States to reconsider their approach, so that the reform can improve transparency and efficiency in ports. In contrast, FEPORT, the **organisation representing the interests of operators of private terminals**, has [supported](#) the proposal in general and welcomed the exclusion of social elements and cargo-handling services from competition. It was, however, concerned by the potential impact on the pricing freedom for private terminal operators. The **European Sea Ports Organisation** (ESPO) has [denounced](#) the watering down of ports' autonomy to set their own charges and affirmed that transparency in public funding and guidance for state aid for port infrastructure remain a priority.

Advisory committees

The **European Economic and Social Committee** (EESC) welcomed, in its [opinion](#) of 11 July 2013 by rapporteur-general Jan Simons (Group I, The Netherlands), the exclusion of passenger transport and cargo-handling services from the scope of the regulation and the launch of an EU social dialogue committee. It pointed out, however, that the powers conferred on the Commission to adopt delegated acts undermine the commercial

freedom of the port managing bodies to set port charges and dismissed the proposed independent supervisory body as superfluous.

The **Committee of the Regions** (CoR), in its [opinion](#) of 28 November 2013 by rapporteur Alessandro Cosimi (PES, Italy), stressed the need to take into account the diversity of EU ports. It questioned the choice of a regulation as opposed to another legal instrument, and the added value of establishing an independent supervisory body. Furthermore, it disagreed with limiting the commercial freedom of port managing bodies by common charging principles. When preparing the opinion in October 2014, the CoR was pleased to see that the Council shared its [approach](#).

Both committees proposed to exclude several of the proposed services from the scope of the regulation on the grounds that they serve objectives of general interest.

Council

Since the beginning of the negotiations, the Council has expressed [concerns](#) on the substance and form of the legal instrument. Member States would have preferred a directive or even a type of 'soft law' (for instance, guidelines) over a regulation. The concerns about substance focused on the scope of the regulation as regards the types of port and the services covered.

Finally, the Council adopted a general [approach](#) in October 2014, reducing the scope of application. It decided that all proposed services will be subject to the financial transparency rules, but some will not have to be opened up to competition. Specifically, dredging was not to be considered as a port service, but would remain subject to the rules requiring separate accounts. Member States could also exempt pilotage from market access rules, but would still have to apply the financial transparency rules towards it. Ministers agreed to include considerations of safety, security and environmental protection as grounds for limiting the number of service providers. However, Member States could decide not to apply the rules on the separation of accounts to certain small ports, or to exclude ports located in the outermost regions, such as Réunion and the Canary Islands, from the scope of the regulation.

Finland, the Netherlands, Estonia and Spain did not share this approach, asking for stricter rules. Spain in particular would have preferred passenger services and cargo handling to be opened up to competition, given their economic importance. Conversely, Lithuania would have preferred dredging to be fully excluded from the new regulation.

National parliaments

Seven [national parliaments](#) submitted a reasoned opinion⁹ and political dialogue was exchanged with Belgium, Germany and Poland. Most parliaments did not support the proposal and perceived it as incompatible with the principle of subsidiarity. Some considered the legal form (a regulation) to be excessive. The powers conferred on the Commission to adopt delegated acts were regarded as too broad.

Parliamentary advice

On the request of its Committee on Transport and Tourism (TRAN), the European Parliament has commissioned and published three studies on port issues.

The 2009 study ['The evolving role of EU seaports in global maritime logistics'](#) explores trends in maritime logistics since the 1990s and the corresponding evolution of ports. It formulates recommendations for further focus of ports policy, such as extending

seaports' capacity, easing congestion in port areas, pooling of containers and administrative and legislative simplification.

The 2011 study '[State aids to EU seaports](#)' reviews the state of state aid rules and examines the application of the relevant Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU) to port infrastructure projects. It contains country reports and several project cases and concludes that public financing of seaports is in practice often not classified as state aid.

The 2015 study '[Modal share of freight transport to and from EU ports](#)' examines the modal share of port traffic in the EU and assesses the progress made towards reaching policy objectives on the modal shift from road to alternative modes. The study considers that despite the dominant position of road transport in freight transport, the ports which it evaluates often showed a satisfactory level of the modal share attributable to rail and inland waterways transport.

In addition, the TRAN Committee held a mini-hearing on the port services proposal on 5 November 2013.

Legislative process

The legislative proposal was published in May 2013 and the Commission presented it to the Transport, Telecommunications and Energy Council the following month. In November 2013, TRAN Committee rapporteur Knut Fleckenstein (S&D, Germany) presented a (first) [draft report](#), which the committee debated in May 2014. However, due to the lack of time before the 2014 European elections and a number of essential policy issues concerning ports remaining unresolved (the Directive on concessions and the [modernisation](#) of State aid), the committee never voted on this draft report.

In June 2014, the Commission proposal was debated in Council. A majority of Member States opposed the proposed right of the Commission to harmonise port infrastructure charges through delegated acts. Some appreciated that the TRAN Committee draft report improved several aspects of the proposal. In October 2014, Council adopted a general [approach](#) (see above).

In May 2015, the TRAN Committee rapporteur submitted [another draft report](#), in which he suggested that pilotage should not be subject to competition and dredging should be excluded from the scope of the regulation. In addition to the scarcity of land and public service obligations, the rapporteur proposed three other criteria for reducing the number of service providers (market size, port capacity and the environment). He also recommended that ports should have a certain autonomy to set the charges according to their business strategy. Lastly, by suggesting that 'independent supervision' could be carried out by the existing control authorities, the rapporteur shifted the focus from the supervising bodies to the task itself. In July 2015, over [700 amendments](#) to the draft report were tabled in the TRAN Committee, concerning the form, the scope and the applicability of the proposal.

The Committee on Employment and Social Affairs (EMPL) was the only one which decided to draw up an opinion. In June 2015, the EMPL Committee debated the [draft opinion](#) presented by Rina Ronja Kari (GUE-NGL, Denmark), proposing to increase the focus on transparency, but finally the opinion was [voted down](#) on 13 October.

The TRAN Committee discussed the file again on 12 October 2015. MEPs acknowledged the quality of the draft report presented but did not wish to vote on the proposal

before the Commission had finished revising state aid block exemption rules. On the latter point, the Commission has already carried out four [public consultations](#). Adoption of the revised regulation was scheduled for 2014, but has been delayed.

The [draft report](#) is provisionally scheduled for a vote in the TRAN Committee on 25 January 2015, with the aim to gain a mandate to launch trilogue negotiations.

References

[Market access to port services and financial transparency of ports](#), European Parliament, Legislative Observatory (OEIL).

[The evolving role of EU seaports in global maritime logistics – capacities, challenges and strategies](#), study, European Parliament, Policy Department B, 2009.

[State aids to EU seaports](#), study, European Parliament, Policy Department B, 2011.

[Modal share of freight transport to and from EU ports](#), study, European Parliament, Policy Department B, 2015.

Endnotes

¹ According to the [Commission](#), 2 200 port operators currently employ around 110 000 dockers.

² The [OECD](#) indicates that the average capacity of a container ship has doubled in just one decade. The largest container ships can currently carry 19 200 twenty-foot containers, but ships with a capacity of more than 21 000 containers have been ordered and should be operational in 2017.

³ Directive [2014/94/EU](#) on the deployment of alternative fuels infrastructure requires all seaports on the TEN-T core network to be equipped with LNG refuelling points and shore-side electricity supply by the end of 2025.

⁴ Directive [2005/65/EC](#) and Regulation [2004/725/EC](#) call on the Commission, in collaboration with the Member States, to carry out inspections to ensure that the relevant security measures are being applied in EU ports. In view of the above, on 25 September 2014 the Commission instigated proceedings against [Spain](#) before the EU Court of Justice, as 20 Spanish ports had yet to adopt and implement the safety plan laid down in the Directive.

⁵ The port services concerned are: bunkering (refuelling), dredging (clearing sand away from access paths), mooring (the operations for connecting the ship to the quay), port reception facilities (including waste collection), pilotage (where a vessel is guided into and out of port by a pilot), towage (assisting a vessel in manoeuvring in and out of a port using a tug), cargo handling and passenger services.

⁶ At the EU level, they are usually referred to as 'services of general (economic) interest', defined in the Commission's [Green Paper](#) of 2003 as 'market and non-market services which the public authorities class as being of general interest and subject to specific public service obligations'.

⁷ These requirements must be based on objective and proportionate criteria and can only concern professional qualifications, the necessary equipment, maritime or general safety and security in the port and relevant environmental requirements.

⁸ The European sectoral social dialogue committee (SSDC) for ports brings together the European Transport Workers' Federation (ETF), the International Dockworkers Council (IDC), the European Sea Ports Organisation (ESPO) and the Federation of European Private Port Operators (FEPORT).

⁹ France, Italy, Latvia, Malta, Poland, Spain and Sweden.

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