The Award of Concession Contracts
Application to Seaports

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Summary

★ Diversity of applicable regimes
★ Transparency where it matters
★ Matching market access with continuity of investment
★ Specific issues with EU Directive proposal
Diversity of applicable regimes

★ Port management mostly devolved to a port authority
★ Port authorities are ‘contracting entities’ with:
  □ Terminal operators (cargo-handling / passenger services)
  □ Industry and logistics (warehousing)
  □ Providers of technical-nautical services
  □ Other service providers
★ Many service contracts involve allocation of port land
★ Legal regimes land-related contracts very different in MS:
  □ Public law: public service contracts / domain concessions
  □ Private law: lease agreements
  □ Mixture or no particular regime
Transparency where it matters

★ Port authorities should be able to set selection criteria that reflect commercial strategy and development policy and take into account dynamic nature port sector

★ Transparency obligations (including use of public selection procedures) should be proportional:
  □ sufficient connection with functioning internal market
  □ exclude contracts single-user facilities (pure land lease)

★ Durations of contracts must allow reasonable return on investment but maintain a risk inherent in exploitation

★ Contract clauses on quality and performance of services, intra-port competition and sustainability must be possible
Current use of public selection procedures to contract port land out

Matching open market access with continuity of investment

★ Prolongation of contracts should not be an unconditional and automatic right of incumbent operators
★ But if an incumbent operator performs well and commits to continue investment, there should be scope to prolong
★ If not, operators would typically cease all investments in the last years of the agreement
★ Possible solutions:
  □ Anticipate prolongation options in original contract and make conditions specific
  □ Set objective parameters to make prolongation decision
Specific issues with EU Directive proposal

★ Potential added value for port sector under discussion

★ Scope:
  □ Will not apply to all land-related contracts (case-by-case)
  □ Clearer for technical-nautical service contracts
  □ Complementary instrument EC ports policy review (?)

★ Threshold very low for the port sector, alternative calculation based on surface would be better

★ Procedural requirements are quite stringent, which may conflict with dynamic nature of the port sector

★ Possibility for prolongation of contracts should be clearer
Thank you for your attention!

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