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Executive Summary of the Impact Assessment accompanying the document
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

Delegations will find attached Commission document SWD(2013) 182 final.

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COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

**Proposal for a regulation of the European Parliament and of the Council
establishing a framework on the market access to port services and the financial
transparency of ports**

{COM(2013) 296 final}

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COMMISSION STAFF WORKING DOCUMENT

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Proposal for a regulation of the European Parliament and of the Council

establishing a framework on the market access to port services and the financial transparency of ports

LEAD DG: DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT

1. GENERAL CONTEXT

Europe is one of the densest port regions worldwide.

As the world's principal trading bloc, the EU is highly dependent on the maritime transport system. 37% of goods exchanged within its internal market transit through ports. In terms of passenger transport, ports service regional and local traffic to link peripheral and island areas. Ports are essential facilitators for the economy as they have a crucial function in logistics and are a significant generator of jobs.

The 319 ports of the trans-European transport network (TEN-T) which account for 96% of goods and 93% of passengers transiting through EU ports play a key role in the European transport system.

2. PROBLEM DEFINITION

The main problem is the structural performance gap in some TEN-T seaports. The problem is exacerbated by the need to adapt ports to new transport and logistics requirements at a moment of scarce public funding. This creates risks of congestion and puts at risk an efficient, interconnected and sustainable TEN-T and hence the smooth functioning of the internal market.

In a business-as-usual scenario the expected transport growth, changes in transport and logistics requirements and the structural gaps in the current performance of ports will cause capacity problems and aggravate the current un-balanced use of the network. This will lead to under-capacity problems in certain ports and further congestion in their broad hinterland. This will undermine the development of short sea shipping. The low performance of some TEN-T ports is a missed opportunity for the economic development of the areas they serve, hence the Union as a whole. Decaying and non-adapted port infrastructure can affect the competitiveness of European industries.

Without tackling these problems, achieving the goals of the TEN-T will be at risk.

Finally, there is a major concern about unfair competition between ports linked to public funding practices. Port workers' trade unions oppose EU provisions touching on the existing port labour regimes in the Member States.

3. ROOT CAUSES

The Commission identified three problem drivers. The first is the lack of adequate connections between ports and the rail, inland waterways and road networks, is addressed by the TEN-T policy and is therefore not further addressed in the impact assessment. The other drivers are described below.

3.1. Problem driver 1: Sub-optimal port services and operations in some TEN-T seaports

Three root causes are linked to this issue:

- (1) many of the port services are subject to a weak competitive pressure due to market access restrictions;
- (2) the exclusive or special rights, although justified in a number of situations, may lead to market abuses and
- (3) in some ports users are faced with too much administrative burden due to a lack of coordination within ports.

3.2. Problem driver 2: Port governance frameworks not attractive enough for investments in all TEN-T seaports

Two root causes explain the overall unattractive investment climate in several ports:

- (4) unclear financial relations between public authorities, port authorities and port services providers and
- (5) weak autonomy of ports to define infrastructure charges and non-transparent link with costs.

4. ANALYSIS OF SUBSIDIARITY

Articles 58, 90 and 100 of the Treaty on the Functioning of the European Union (TFEU) extend to ports the objectives of a genuine internal market in the context of the Common Transport Policy.

Despite the specific nature of the port sector and its long-lasting local history and culture, the port sector has a strong international and European dimension. Because of the latter and of internal market reasons and cross-border network effects, the proposed initiative targeting the TEN-T ports is in line with the subsidiarity principle.

5. OBJECTIVES

5.1. General objective

The general objective is to improve the performance of the TEN-T seaports in order to contribute to the goal of a more efficient, interconnected and sustainable functioning of the TEN-T in line with the objectives of the Transport White Paper and the EU 2020 strategy for a resource efficient growth.

5.2. Specific objectives (SO)

SO1. Modernise port services and operations in all TEN-T seaports

SO2. Optimise port governance frameworks as to enable a more attractive investment climate

5.3. Operational objectives (OO)

5.3.1. Modernisation of port services and operations

- (a) OO1. Clarify and facilitate access to the port services market.
- (b) OO2. Prevent market abuse by designated port service providers.
- (c) OO3. To ensure the consultation of port users on the main decisions which affect the functioning of the port in all (100%) TEN-T ports by the implementation date of the initiative.

5.3.2. Creation of framework conditions which attract investments in ports

- (d) OO4. To ensure the transparency in the financial relations between public authorities, port authorities and port service providers in all (100%) TEN-T ports by the implementation date of the initiative.
- (e) OO5. To ensure that all (100%) TEN-T port authorities are free to autonomously set their port infrastructure charges by the implementation date of the initiative, with the possibility of environmental modulation of the charges.

6. POLICY OPTIONS

6.1. Discarded policy measures

The Commission discarded the following measures after the consultation of stakeholders:

- (1) Reform of the port labour market is not considered nor proposed in any of the policy packages (PPs) because of the recent progress made in the set-up of the social dialogue between employers and employees: the Social Dialogue Committee for Dockers should be up and running in the course of 2013.
- (2) From the consultation, it appears that the issue of 'self-handling' is no longer an issue to be considered at EU level.
- (3) As the TFEU foresees a wide discretion for Member States to organise Services of General Economic Interest as they deem appropriate, none of the PPs impinge upon this discretion margin.

6.2. Policy Packages

6.2.1. PP1: "Horizontal Instruments and Transparency"

PP1 combines the use of horizontal instruments, a 'soft' measure on market access and legally binding provisions on financial transparency, intra-port coordination and port infrastructure

access charges. The soft measure is a non-binding Commission's Communication which explains the TFEU rules on non-discrimination and the future Directive on concession.

6.2.2. PP2: “Regulated competition”

PP2 introduces the freedom to provide services to the provision of port services. This freedom can be limited if necessary, based on objective and transparent reasons related to the lack of space or reasons of public interest. When limiting the freedom, the public or port authority would have to enter into a contractual arrangement with a port service provider via an open tendering procedure, except in duly justified cases.

Transparency is enforced in those cases where public funding is involved in order to be able to track possible distortive state aids and cross-subsidies between port services. If the service is provided by an in-house operator or another operator with an exclusive right, a confinement obligation ensures reciprocity in the first case and price regulatory oversight avoid abuses in both cases.

The charging for using the port infrastructure is done transparently and based on cost.

A port users' committee helps to orient the port activities more towards the users and clients of the port.

6.2.3. PP2a: “Regulated competition and port autonomy”

PP2a consists of PP2 with the following variations:

- The obligation to have recourse to open tendering in the event of space restrictions or public service obligations applies not only to new contracts but also to substantial changes to existing contracts.
- The regulatory oversight of service providers with exclusive rights applies only to the markets which have not been granted through an open tendering (if no open procedure is used, the market can not be contested).
- Each port is given the right to set itself the structure and level of port infrastructure charges provided that the charging policy remains transparent. The initiative also encourages a differentiation according to the environmental performance of ships or fuels.

6.2.4. PP3: “Full competition and port autonomy”

PP3 builds on PP2a by additionally requiring at least two competing and independent operators for each port service where the number of operators is limited as a result of space constraints. There is also a functional/legal separation. To ensure that the port keeps functioning, the central coordination role of the port authorities is strengthened.

7. ASSESSMENT OF IMPACTS

7.1. Economic impacts

The impacts of the PPs **in terms of transport costs** have been estimated. The potential savings of total port related costs are presented in Table 1 below.

Table 1: Effects of policy packages on savings in total port costs (PwC, 2013)

	Change (%) in Total Port Costs	Annual Savings (€ million)
PP1	-2.0%	318.15
PP2	-3.0%	481.47
PP2a	-6.8%	1,071.37
PP3	-7.9%	1,245.21

To judge whether the policy packages **attract more investment**, they have been assessed against four criteria. The results are presented in Table 2.

Financial transparency will encourage public resources to be allocated more efficiently and will reduce the risk of distortive State aids. Private investors will see fewer risks of unfair competition resulting from potentially illicit State aids.

Table 2: Impact of the policy packages on the investment climate

	PP1	PP2	PP2a	PP3
Efficient allocation of public funding	+	++	++	+++
Lower risks of distortive state aid to ports	+	++	++	+++
Better climate for private investment	+	++	+++	++
Economic rationality of port charges	+	+++	++	+

("+" refers to the intensity of a positive correlation: for instance in the case of "lower risks of distortive state aid to ports", a "+" means less risk on distortive state aids)

The overall **administrative costs** of the policy packages is calculated and presented in Table 3.

Table 3: Additional administrative costs per policy package against the baseline scenario (PwC, 2013)

	Recurrent (€ million / year)		One off (€ million)	
	Public sector	Businesses	Public sector	Businesses
PP1	9.0	16.2	9.9	15.7
PP2	7.7	14.0	32.4	15.7
PP2a	2.3	2.2	24.4	0.8
PP3	33.0	3.9	121.8	0.8

For **SMEs and microenterprises** the total effect is difficult to appreciate. In general, a better business environment will help create new SMEs in the port sector, opening up investment and job creation opportunities.

The impacts on **multimodality, short sea shipping and traffic shifts from land to sea** have also been estimated. There are differential regional impacts due to the uneven (and variable) distribution of cargo streams. This explains why specific regions will benefit more from short sea shipping than the EU average (Table 4).

From an **international competitiveness** perspective, European ports (MED and Baltic) which are currently losing transshipment business to non-EU ports, will be strengthened by having a sound investment basis. While consideration should be given to possible dominant positions resulting from vertical integration, open market access can facilitate international investment and could be accompanied by reciprocal access to the markets of third countries for European port and terminal operators.

Table 4: Potential increases (%) of short sea shipping tonnage between regions (PwC, 2013)

Potential changes of short sea shipping between different coastal regions						
	East Med	Cent Med	West Med / Atl	UK / IRL	North Range	Scand / Balt
East Med	1.51	6.50	1.98	0.68	0.64	0.24
Cent Med	8.39	6.12	6.43	0.25	2.68	1.19
West Med / Atl	1.25	4.79	6.56	2.67	2.35	0.83
UK / IRL	0.16	0.07	3.90	3.23	1.10	1.36
North Range	0.51	4.54	1.80	1.54	4.34	2.59
Scand / Balt	0.37	0.84	3.09	5.04	5.35	2.49

Categories cover: East Med (Greece, Black Sea EU, Slovenia); Cent Med (Italy, Malta, French Med); West Med/Atl (Spain, Portugal, French Atlantic); UK/IRL; North Range (Hamburg-Le Havre); Scand/Balt

7.2. Environmental impacts

All the PPs help to mitigate the overall environmental impact of transport. The overall result is presented in Table 5:

Table 5: Effects of policy packages on annual savings in external costs (PwC, 2013)

	Savings in external costs (€ million/pa)
PP1	23
PP2	34
PP2a	69
PP3	76

7.3. Social impacts

All PPs will create a better business environment which will lead to more activity and create jobs. As measures touching on labour regimes have been discarded, no particular impact in terms of wages, labour relations and labour conditions is expected.

Table 6: Summary of the aggregate economic, environmental and social impacts

Impact compared to the baseline	PP1	PP2	PP2a	PP3
Efficiency	+	++	+++	+++
Investments	+	+	++	++
Administrative burden	+	++	+++	+
SMEs	++	++	++	++
Transport impact	+	+	++	++
Environmental impact	+	+	++	++
Social Impact	+	++	++	++

+ refers to a positive correlation: e.g. in the case of administrative burden, more + means less burden, in the case of environmental impacts, more + means better taking environmental considerations into account

8. COMPARISON OF OPTIONS

8.1. Effectiveness

All PPs would be effective, though each of them would show results on a different time scale and not with the same reliability.

8.2. Efficiency

With regard to net annual efficiency gains, PP3 scores the best, but is very closely followed by PP2a, for which the administrative cost is much lower than PP3 and is close to zero for business. PP1 and PP2 score much worse than both PP2a and PP3.

8.3. Coherence

All PPs are in line with the completion of the internal transport market and are coherent with the EU policy objectives reflected in the Single Market Act, the White Paper on Transport and Europe's 2020 growth strategy. PP2, PP2a, and to a greater extent PP3, show important trade-off between economic and social impacts.

8.4. Summary of the comparison of policy packages

Table 7: effectiveness, efficiency and coherence of the policy packages

	PP1	PP2	PP2a	PP3
Effectiveness	+	++	+++	+++
001 Clarify and facilitate access to the port services market	+	++	+++	+++
002 Prevent market abuse by port service providers with exclusive or special rights	+	++	++	++
003 Improve coordination mechanisms within ports	++	+	+	++
004 Ensure a more transparent framework for financial relations between public authorities, port authorities and providers of port services	+	++	++	+++
005 Ensure port infrastructure charges are autonomously set, allowing for the internalisation of external costs	+	++	+++	++
Efficiency	+	+	+++	+++
Coherence	Minor trade-off	Limited trade-off except for cargo handling (important trade-off)	Limited trade-off except for cargo handling (important trade-off)	Important trade-off

"+" refers to the intensity of a positive correlation, no negative or neutral correlations have been identified

9. PREFERRED OPTION

Based on the analysis set out in the impact assessment, PP2a is the preferred policy option. According to estimates, PP2a will generate savings in port costs of the order of € 1 billion per year. It will induce additional short sea shipping traffic of around 13.3 billion tonne-kilometres (an increase of up to 6.5% on a number of routes). This will lead to increased port activities, which will create direct and indirect port-related jobs.

However, this impact assessment advocates caution as far as market access of cargo handling is concerned, because of three aspects:

- There is an important trade-off with social issues.
- Cargo handling services are already exposed to competitive pressure in some ports.
- Most of cargo handling services are concession covered by the future Directive on concession.

So, as regards the clarification and facilitation of market access to cargo handling services, the PP1 approach might be just as appropriate.

If this variant of PP2a¹ were to be chosen, the impacts initially estimated for PP2a would decrease slightly in intensity but would remain overall similar in tendency; the savings in port costs would still represent up to 10 billion until 2030. The details of the quantified impacts are presented in table 8.

Table 8: Comparison PP2a and 'PP2a variant' (excluding market access measures for cargo handling) (PwC, 2013)

	PP2a	PP2a variant
Change (%) in total port costs	-6.8	-4
Annual savings in total port costs (€ million)	1071.37	635
Increase in Short Sea Shipping (%)	1.63	0.97
Induced tonnes Km (billion) in EU ports	13.311	7.205
Administrative costs (recurrent – public) (€ million)	2.3	2.1
Administrative costs (recurrent - business) (€ million)	2.2	1.7
Annual external cost savings (€ million)	69	46

The same reasoning may hold good for passenger services, and a similar approach might therefore be envisaged. However due to unavailability of data it was not possible to make a separate impact calculation.

¹ 'PP2a variant' = PP2a with one difference: an explanatory Commission communication on how existing rules apply to cargo handling services, instead of proposing new legal provisions on the matter.

10. MONITORING AND EVALUATION

The Commission will monitor the implementation and effectiveness of this initiative through a set of core indicators. The data will be gathered using a method developed by the PPRISM² project and FP7 RTD project that the Commission is launching to provide data on a continuous basis.

Regarding evaluation, the idea is that, three years after the entry into force of the proposed legislation, the Commission will evaluate whether the objectives of the initiative have been attained. This evaluation will be based in part on the core progress indicators mentioned above.

² <http://pprism.espo.be> .