

*Reasoned opinion of the European Affairs Committee of the Saeima on the compliance with the principles of subsidiarity and proportionality in the 23 May 2013 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*

The European Affairs Committee of the Saeima has examined the European Commission's 23 May 2013 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 and has concluded that the Proposal for a Regulation is non-compliant with the principles of subsidiarity and proportionality.

Article 5 (3) of the Treaty on the European Union states that under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The Commission justifies the need for this Proposal for a Regulation by referring to Articles 58, 90 and 100 (2) of the Treaty on the Functioning of the European Union, the latter of which states that the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may lay down appropriate provisions for sea and air transport.

Yet the sea transport (as well as the port sector), which would be regulated by the proposed Regulation, according to the EU's legal acts, is an area that does not fall within the exclusive competence of the European Union, but rather falls within the joint competence of the EU and Member States. Therefore, the area covered by the Proposal for a Regulation – the port sector – has so far been regulated by the legal acts of Member States, including those of Latvia, and action has been taken at the EU level only when it is impossible to solve the problems at national level.

By adopting the Proposal for a Regulation drafted by the Commission in its current wording, Member States would lose their right and possibility to continue to regulate their port sector through their national legal acts, which implies a breach of the

principle of subsidiarity set in the EU's fundamental legal acts with regard to distribution of competences between the European Union and Member States in the area of sea transport and, especially, in the port sector.

In order to avoid the problems indicated in the Explanatory Memorandum of the Proposal for a Regulation (port services subject to a weak competitive pressure due to market access restrictions; port users faced with excessive administrative burden due to a lack of coordination within ports; weak autonomy of ports to define infrastructure charges; etc.) and to contribute to the goal of a more efficient, interconnected and sustainable functioning of trans-European transport network, the objective of the Regulation, as defined in Article 1, is, first, to establish a clear framework for access to the market of port services and, second, to establish common rules on the financial transparency and charges to be applied by managing bodies or providers of port services, applicable to the following categories of port services, either inside the port area or on the waterway access to and from the ports: bunkering, cargo handling, dredging, mooring, passenger services, port reception facilities, pilotage and towage.

The Commission has indicated that this Regulation will avoid additional burden for those ports already functioning well and will create the conditions for the other ports to deal with their structural challenges. The subject and scope of the Regulation is already covered under national regulations of the Member States.

The European Affairs Committee has concluded that in order to achieve the objectives defined in the Regulation, the port sector would suffer from a significant administrative burden, namely, the obligation for Member States to establish two administrative and supervision institutions without clearly defined objectives and principles will result in additional costs and administrative procedures although it is claimed otherwise in the Regulation. The representatives of the port sector of Latvia are against the following obligations:

- a) the obligation to designate the competent authorities within their territory to impose the public service obligations according to Article 8.3 of the Proposal for a Regulation;
- b) the obligation to establish a port users' advisory committee which, according to Article 15 of the Proposal for a Regulation, provides the

managing body of the port with detailed information about the port infrastructure or service charges;

- c) the obligation to establish an independent supervisory body which, according to Article 17 of the Proposal for a Regulation, monitors and supervises the application of this Regulation in all the seaports covered by the Regulation in the territory of each Member State.

According to the Impact Assessment of the Proposal for a Regulation, in order to achieve the objectives defined in the Proposal for a Regulation, *inter alia* handling and attracting of larger cargo and passenger volumes in ports with the current infrastructure (2.2.1), the Commission proposes the adoption of the EU level regulation which would govern port services, charging principles and competition among the operators in all Member States. However, according to the Impact Assessment of the Proposal, it is proposed to regulate charges for services (pilotage and towage) that account for only 20% of total port operation costs, while cargo handling constitutes the largest part of the costs (45%–60%). Therefore, the European Affairs Committee has concluded that the objective defined in the Proposal will not be achieved since the largest part of the port operation costs are not covered by the Proposal. Concerning the measures for achieving the Regulation's objectives (establishing independent supervisory bodies, introducing common charging principles, etc.) the European Affairs Committee has concluded that for smaller Member States, including Latvia, the costs in the port sector will inevitably increase, thus significantly weakening the ports' ability to maintain their competitiveness (for instance, through adoption of the Commission's delegated acts on common charging principles for port infrastructure charges).

The European Affairs Committee would like to point out that the port sector is the main element of Latvia's competitiveness in cargo transit, which so far has ensured a stable position within the Baltic region (along with Estonia, Lithuania, Finland, Poland and Russia). Losing the ability to regulate the basic port operations at the national level would result in Latvia losing its competitiveness to rival countries, thus leaving a negative impact on such transit-related sectors as transport, logistics and other services. Besides, the Proposal does not substantiate the role of defining common status of the European ports in promoting attainment of the EU internal

market development goals, since the Proposal lacks a clearly defined objective and the desired results.

With reference to the aforementioned considerations, the European Affairs Committee hereby concludes that the Proposal for a Regulation does not comply with the principle of subsidiarity and proportionality. Furthermore, the adoption of the Proposal would be inefficient, since it does not constitute a sufficient and appropriate improvement of legislative framework in the sector. Likewise, there are no grounds to believe the Member States are not in the position to ensure appropriate regulation in the sector, and that a comprehensive regulation at EU level is necessary.

It must be noted that already in 2001 and 2004 the Commission proposed to regulate the port services. Both proposals were rejected, which indicates that there is no need for the EU level regulation in the port sector and that Member States are in a good position to ensure legal framework for port operations at national level, or, as an alternative, the Commission could draft common guidelines.

Please be informed that the Ministry of Transport in collaboration with other line ministries and social partners is currently working on Latvia's draft national position regarding the Proposal for a Regulation.

The European Affairs Committee of the Saeima would also like to point out that several Member States (France, Sweden, UK, Poland, Belgium, Finland and others) have undertaken the evaluation regarding compliance of the Proposal for a Regulation with the subsidiarity principle.