

REASONED OPINION OF THE PARLIAMENT OF MALTA
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
COM(2013) 296

1. Rationale

Article 6 of Protocol No 2 on the Application of the Principles of Subsidiarity and Proportionality annexed to the Treaty of Lisbon states that “[a]ny national Parliament [...] may, within eight weeks from the date of transmission of a draft legislative act, [...] send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity.”

2. Reasoned Opinion

The EU’s power to act

The Maltese Parliament considers that the proposal fails to comply with the subsidiarity principle as the Commission has failed to provide clear evidence of the need for legislative action on the part of the European Union. The need for action by the Union is a prerequisite for EU-level action and for compliance with the subsidiarity principle. Need for EU action should be substantiated by evidence collected and evaluated in an impact assessment, rather than motivated by a perception of the need to act. Both the Commission’s explanation and impact assessment are based on subjective perceptions of a need for action instead of objective evidence of a need for action. There is no clear evidence of why legislation on the right to collective action in the context of providing a framework for market access to port services and financial transparency of ports is required, or of what will be achieved by this legislation as it is proposed.

The Maltese Parliament believes that action at European level must be non-legislative in nature since only then can the diversity of European ports be taken into account and incorporated, ensuring that the action is proportionate to the competitive nature of this sector. It would therefore be unwise to take legislative action while the current framework has not yet been used. For these reasons we believe that legal certainty should be ensured by means of transparent guidance measures, together with specific action whenever problems arise. Self-regulation is essential in this context.

The Commission has yet to provide convincing evidence that there will be significant overall problems in the performance and efficiency of European ports. Port services are mostly accessible by means of tenders and expressions of interest and this proposal is therefore not necessary. It will create a complex situation, complicating the sector with negative impact.

In this respect, it is premature to move forward with legislative action at this stage.

Measures in the proposal

The key provision of the proposal is Article 3, which basically states that freedom to provide services will apply to port services. Managing bodies of a port may, however,

impose minimum requirements on the providers of specific port services. Such requirements should be linked only to professional qualifications, necessary equipment, maritime safety, general port safety and security and relevant environmental requirements. They should not be a way of implicitly introducing market barriers. The criteria should therefore be objective and proportionate to ensure fair treatment for all existing and potential operators. Potential operators should have access to training to acquire relevant specific local knowledge.

This provision will not be imposed on cargo handling services and passengers terminals. These services are often organised by means of concession contracts falling under the scope of the future Directive on the award of concession contracts proposed by the Commission. Moreover additional legal provisions could undermine efforts being made to initiate a Social Dialogue at Union level. Unlike pilotage services to enter and exit ports, pilotage services performed in the deep sea have no direct impact on the efficiency of ports and are therefore not included in this Regulation.

Where relevant, the stated freedom to provide services could be subject to a limitation on the number of service providers. Such a limitation is permissible only in the case of space constraints or reservation which, if clearly documented in a formal port development plan, can justify limiting the number of operators active in the port perimeter or in the case of a public service obligation imposed on an operator and for which the intention should be clear and publicly available.

In the case of public service obligations being imposed by a competent authority in a port or in several ports, such an authority will have the opportunity to organise and commercially exploit specific port services itself under the condition that its activity remains confined to the port or ports where it imposes public service obligations. Employees' rights should be safeguarded and the Member States should have the option of further strengthening these rights in the event of a transfer of undertakings and the relevant staff working for the old undertaking. In those cases where managing bodies of the port benefit from public funds there will be transparent accounting in order to show the effective and appropriate use of these public funds. In those cases where designated port service providers have not been subject to an open public tendering procedure and in the case of internal operators, it should be ensured that the price for the service is transparent, non-discriminatory and that it is set according to normal market conditions. Managing bodies of the port shall define the port infrastructure charges in an autonomous way and according to its own commercial and investment strategy.

Port infrastructure charges may be varied in accordance with commercial practices related to the frequent use of the port 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 proposed Regulation provides for setting up an Advisory Committee of port users. This Committee will bring together representatives of operators of water-borne vessels, cargo owners or other port users who are requested to pay a port infrastructure charge or port service charge. It will be consulted on the structure and the level of the port infrastructure charges and in certain cases the port service charges.

Conclusion

The Maltese Parliament concludes that the Commission has failed to provide clear evidence of the need for legislative action on the part of the European Union or of what will be achieved by this legislation as it is proposed. Furthermore, in Article 3, the Commission proposes measures that could negatively affect the industrial relation systems in place in the Member States.

The Maltese Parliament has decided to object to the proposal and submit this reasoned opinion in accordance with the procedure defined in Article 6 of Protocol No 2 on the Application of the Principles of Subsidiarity and Proportionality, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union.