CORTES GENERALES

CONGRESS OF DEPUTIES
SECRETARIAT GENERAL
GENERAL REGISTER

22.07.13 **023276**

ISSUED

MR PRESIDENT:

I inform you that, during its session on 17 June 2013, the Joint Committee for European Union Affairs approved Reasoned Opinion 7/2013 of the Joint Committee for European Union Affairs, which sets out the reasons why it considers that the 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 (Text with EEA relevance) [COM (2013) 296 final] [2013/0157 (COD)] {SWD (2013) 181 final} {SWD (2013) 182 final} {SWD (2013) 183 final} (dossier no 282/218), is not in line with the principle of subsidiarity.

I forward this decision to you pursuant to Protocols number 1 and 2 of the Treaty of Lisbon, as well as within the framework of political dialogue between national parliaments and EU institutions.

Palace of the Congress of Deputies, 18 July 2013.

[signature]

Jesús Posada Moreno
PRESIDENT OF THE CONGRESS OF DEPUTIES

MR PRESIDENT OF THE EUROPEAN COMMISSION.

CORTES GENERALES

SENATE
10TH CONGRESS
18.07.13 **007494**
ISSUED

MR PRESIDENT:

I inform you that, during its session on 17 June 2013, the Joint Committee for European Union Affairs approved Reasoned Opinion 7/2013 of the Joint Committee for European Union Affairs, which sets out the reasons why it considers that the 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 (Text with EEA relevance) [COM (2013) 296 final] [2013/0157 (COD)] {SWD (2013) 181 final} {SWD (2013) 182 final} {SWD (2013) 183 final} (dossier no 282/218), is not in line with the principle of subsidiarity.

I forward this decision to you pursuant to Protocols number 1 and 2 of the Treaty of Lisbon, as well as within the framework of political dialogue between national parliaments and EU institutions.

Palace of the Senate, 18 July 2013.

[signature]

Pío García-Escudero Márquez
PRESIDENT OF THE SENATE

CORTES GENERALES

MR PRESIDENT OF THE EUROPEAN COMMISSION.

CORTES GENERALES

REASONED OPINION 7/2013 OF THE JOINT COMMITTEE FOR EU AFFAIRS, DATED 17 JULY 2013, ON THE NON-COMPLIANCE WITH THE PRINCIPLE OF SUBSIDIARITY OF THE PROPOSAL FOR A REGULATION OF THE EUROPEAN UNION AND OF THE COUNCIL ESTABLISHING A FRAMEWORK ON MARKET ACCESS TO PORT SERVICES AND FINANCIAL TRANSPARENCY OF PORTS (TEXT WITH EEA RELEVANCE) [COM (2013) 296 FINAL] [2013/0157 (COD)] {SWD (2013) 181 FINAL} {SWD (2013) 182 FINAL} {SWD (2013) 183 FINAL}

BACKGROUND

A. The Protocol on the application of the principles of subsidiarity and proportionality, annexed to the 2007 Treaty of Lisbon, in force since 1 December 2009, establishes a procedure through which national parliaments may verify the compliance of European legislative initiatives with the principle of subsidiarity. This Protocol has been developed in Spain by Law 24/2009, of 22 December, amending Law 8/1994, of 19 May. In particular, new Articles 3(j), 5 and 6 of Law 8/1994 form the legal basis of this Reasoned Opinion.

B. The 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 has been adopted by the European Commission and sent to the national parliaments, which have a period of eight weeks to verify the control of subsidiarity of the initiative. This period ends on 30 July 2013.

C. On 26 June 2013, the Bureau and Spokespersons of the Joint Committee for EU Affairs agreed to examine the abovementioned European legislative initiative, appointing Deputy José Segura Clavell as speaker and requesting the report envisaged in Article 3 j) of Law 8/1994 from the Government.

D. The Government has issued the report, which states that the initiative does not comply with the principle of subsidiarity. The Proposal for a Regulation has such a broad, general scope that it goes significantly beyond the principle of subsidiarity, thus breaching it. Moreover, the proposal does not justify or circumstantiate the need for intervention from the European Union in areas in which Member States have internal regulations that adequately resolve issues such as establishing fees for the use of port infrastructures. The principle of subsidiarity provides that Member States and their competent authorities must be prepared for taking into account considerations that are in line with local, regional or national specificities.

E. In its session held on 17 July 2013, the Joint Committee for EU Affairs approved the present

REASONED OPINION

Article 5(1) of the Treaty states that '*the use of Union competences is governed by the principles of subsidiarity and proportionality*'. In accordance with Article 5(3) of the same Treaty, '*under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union will 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 and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level*'.

The legislative initiative examined is based on Article 100(2) of the Treaty on the Functioning of the European Union, which lays down the following:

'2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may lay down appropriate provisions for sea and air transport. They will act after consulting the Economic and Social Committee and the Committee of the Regions.'

I.- Objectives, policy options considered, proposed action and legal aspects of the Proposal for Regulation

I.1.- Objectives

Europe is one of the most dense port regions worldwide. At the same time, the port sector is very heterogeneous and characterised by a wide diversity in terms of types and organisation. This Regulation respects this diversity and does not seek to impose a uniform model for these ports, which number over 1200 commercial seaports, and through which over 380 million passengers transited in 2011. While the EU is highly dependent on its ports for its trade with the rest of the world, its ports also play a key role for its own internal market, where short sea shipping represents 60% of the tons handled in EU ports. In fact, 96% of all freight and 93% of all passengers through the EU ports transit through the seaports identified in the Commission's proposal for Guidelines on the trans-European transport network (TEN-T), while it must be indicated that not all of these offer the same high-level service.

Hence, the objective of the present Regulation is simply to contribute to the goal of a more efficient, interconnected and sustainable functioning of the TEN-T by creating a framework that improves the performance of all ports and helps them to cope with changes in transport and logistics requirements.

1.- The proposal sets out that 'the objective is to contribute to the goal of a more efficient, interconnected and sustainable functioning of the TEN-T by creating a framework which improves the performance of all ports and helps them to cope with changes in transport and logistics requirements'. It also states that 'the TEN-T ports must help develop short sea shipping as part of intermodal routes'.

2.- It is likewise stated in the Explanatory Memorandum that 'this is the result of an intensive and pertinent consultation of the stakeholders that allowed to focus the Regulation on measures with a high EU added value'. The consultations with stakeholders, carried out by DG MOVE, have been held with:

- Ministries of Transport (informal dialogue)
- Associations in the port sector:
    - Port authorities (ESPO)
    - Private terminal operators (FEPORT)
    - Inland ports (EFIP)
    - Ship-owners (ECSA)
    - Pilots (EMPA)
    - Tug owners and operators (ETA)
    - Mooring operators (EBA)
    - Ship's agents (ECASBA)
    - Shippers (ESC)
    - Dredgers (EuDA)
    - Logistic operators (CLECAT)

- Unions of port workers:
    - International Dockers Council (IDC)
    - Dock workers' section of the European Transport Workers Federation (ETF)

3.- The main conclusions of the consultation process, carried out between 2012 and 2013, are:

- Need for a fair level playing field both for inter-port and intra-port competition.

- Need for legal certainty and a business friendly environment (elimination of bureaucracy and administrative burden).
- Need to control state aid in order to prevent unfair competition between ports related to public funding of port infrastructures.
- Dissatisfaction amongst users of port services, shipping companies and import-export industries regarding how port services are provided in numerous ports, in terms of price, quality and administrative burden.
- Although 30% of European port authorities consider that the current situation is unsatisfactory, the majority are opposed to the introduction of EU procedures that will limit the capacity of port authorities to grant contracts and/or licences to port service operators through direct award.
- Port workers' unions extremely oppose any EU provisions touching on the existing port labour regimes in certain Member States.
- Representatives of pilotage services argue that, because pilotage is a service that affects safety, it should be excluded from competitive pressure.
- Most stakeholders believe that the EU port system must be prepared to overcome challenges such as scarce funding resources, competitiveness vis-à-vis ports in neighbouring third countries and other world regions, creation of added value and jobs, as well as coping with environmental impacts.

4.- In view of the above, the Proposal for a Regulation proposes overcoming two key challenges associated with:

- port operations and services that are below optimal level in some TEN-T ports;
- port governance frameworks that are not attractive enough for investments in all TEN-T ports.

In terms of the first challenge, three factors that prevent the optimal organisation of port services are identified:

- Many port services are subject to weak competitive pressure due to market access restrictions.
- Monopolistic or oligopolistic rights, although justified in certain situations, may lead to market abuse.
- Users of port services are faced with excessive administrative burden in some ports.

In terms of the first challenge, two factors are identified that explain this situation:

- legal uncertainty;
- need for better infrastructure planning.

Two additional factors are also noted:

- unclear financial relations between public authorities, port authorities and port service providers;
- weak autonomy of ports to define infrastructure charges and lack of transparency in their relationship with costs.

5.- In light of the two challenges indicated, the five following operational objectives are set out in the Explanatory Memorandum of the Proposal for Regulation:

1) Clarify and facilitate access to the port services market.
2) Prevent market abuse by designated port service providers.
3) Improve coordination within ports with shippers, logistic operators and cargo-owners.
4) Make the financial relations between public authorities, port authorities and providers of port services transparent.
5) Ensure autonomously set and transparent port infrastructure charges.

I.2.- Policy options considered

1.- The Explanatory Memorandum explains that four strategies or options have been examined, which in the Proposal for a Regulation are designated as follows:

- Policy Package 1 (PP1): Transparency
- Policy Package 2 (PP2): Regulated competition
- Policy Package 3 (PP3): Regulated competition and port autonomy
- Policy Package 4 (PP4): Full competition and port autonomy

2.- Policy Package 1 (PP1): Transparency is described as 'soft' measure characterised by:

- non-binding communication to clarify and facilitate the market access of port services;
- binding provisions in monopolistic or oligopolistic situations in order to subject port services to price monitoring so as to avoid excessive charging;
- the financing and setting of port charges is left over to the competent authorities (Ministries of Transport in state-owned ports) on the condition of basic transparency;
- a port users' committee ensures the coordination of services inside the port.

3.- Policy Package 2 (PP2): Regulated competition introduces the principle of freedom to provide services under a scheme of regulated market access, characterised by:

- freedom to provide services, which can be restricted due to lack of space in the port area or due to public service obligations (availability, accessibility, etc.);
- services attributed based on a public tendering procedure in the event of restricting the freedom to provide services;
- subjecting services under a monopolistic or oligopolistic situation to price monitoring;
- having separated accounts in order to ensure the transparency of financial relations between public authorities, port authorities and port service providers;
- rules that link the setting of port infrastructure charges to actual costs;
- a port users' committee that facilitates the coordination of services inside the port.

4.- Policy Package 2a (PP2a): Regulated competition and port autonomy consists of Policy Package 2 (PP2): Regulated competition, with the following differences:

- the need for public tenders, not only in new contracts when the freedom to provide services is restricted, but also in the event of substantial changes to existing contracts;
- greater autonomy is given to ports: on infrastructure charging, each port is given the right to set itself the structure and level of port dues, provided that this charging policy is transparent.

5.- Policy Package 3 (PP3): Full competition and port autonomy is described as building on PP2a, which is characterised by:

- obliging at least two competing and independent operators for every port service where the number of operators is limited as a result of space constraint;
- strengthening the central coordination role of the port authorities;
- each port authority would be free to determine the structure and level of infrastructure charges according to its own commercial practices (as in PP2a).

6.- The Explanatory Memorandum of the Proposal for a Regulation states that the option chosen is PP2a with a variant for cargo handling and passenger services.

I.3.- Model of the Proposal for Regulation

1.- The Regulation shall apply to all the seaports identified in the Commission's proposal for Union Guidelines on the trans-European transport network.

2.- The port services to which the Regulation shall apply are:

- bunkering;
- cargo handling;
- dredging;
- mooring;
- passenger services;
- port reception facilities;
- pilotage; and
- towage.

3.- The freedom to provide services shall be applicable to all port services, except cargo handling services and passenger terminals, such that the sole requirements to be imposed shall only relate to professional qualifications, the necessary equipment, maritime safety, general safety and security in the port and relevant environmental requirements.

4.- Notwithstanding the above provision, the number of service providers may be limited for one of the following reasons:

- space constraints (documented through a port development plan); or
- public service obligations.

5.- Public service obligations that, where appropriate, are established by 'the competent authority' designated by the Member State, must be clearly defined, non-discriminatory and verifiable and must related to the availability (non-interruption of the service during the day, night, week and year), the accessibility to all users or the affordability for certain user categories of the service.

In these cases, the competent authority would be able 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. In such a case, the port service provider shall be considered an internal operator.

6.- Any limitation on the number of port service providers shall follow a selection procedure (public tender) that will be open to all interested parties, non-discriminatory and transparent. In these cases, the provider or providers selected shall conclude a port service contract with the managing body of the port.

7.- 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, in particular in such way that the total charges do not exceed the total incurred costs and a reasonable profit.

8.- Managing bodies of the port shall define the port infrastructure charges in an autonomous way and according to its own commercial and investment strategy.

9.- A port users' advisory committee shall be set up in every port. This committee shall be consulted on the structure and the level of the port infrastructure charges and in certain cases the port service charges.

10.- Member States shall ensure that an independent supervision body – which may be an existing body – monitors and supervises the application of this Regulation.

I.4.- Legal aspects of the proposal

1.- **The proposal says it is in line with the principle of subsidiarity**, although it recognises the specific nature of the port sector and the different local cultures that exist. It argues that actions by Member States alone cannot ensure a level playing field within the EU internal market, nor can they take actions to improve the performance of ports located on the same trans-European corridor but in other Member States.

2.- **The legal proposal is a Regulation, and therefore binding in its entirety**, which, in the opinion of those who drafted it, makes it possible to ensure a uniform implementation, enforcement and a level playing field in the internal market. However, it recognises that the Member States, regional and local public authorities have traditionally been the main actors involved in port infrastructure development and management.

II.- Impact of the Proposal for a Regulation on the Spanish port model. Compatibility with Spanish sectoral legislation

II.1- The Spanish port model

1.- In general, and in terms of the content of the Proposal for Regulation, the Spanish port model is based on:

- Publicly owned infrastructures and service areas (public port domain), where private use is possible through a concession or licence. The state public domain includes:
  - the state-owned land, works and fixed port facilities allocated for use by the ports;
  - the land and fixed facilities that port authorities acquire through expropriation, as well as those acquired through contracts of sale or any other deed when they are duly allocated by the Ministry of Public Works;
  - the works that the state or port authorities carry out on in this domain;
  - the works constructed by public port domain licensees, when they revert to the port authority;
  - the land, works and fixed facility aids to navigation that are allocated to Puertos del Estado and the port authorities for this purpose;
  - the water spaces included in the port service areas.

- Port services that are, in general and except for in very exceptional situations, carried out by private initiative. Providing these services is contingent upon obtaining the appropriate licence granted by the port authority. When the number of providers is limited, the licences are awarded through a competitive tender. The licences include the charging structure, maximum charges and review criteria, where appropriate.

The port services covered by Spanish port regulations include the following:

- pilotage service;
- port towage service;
- mooring and unmooring service;
- passenger services (passenger embarking and disembarking, luggage loading and unloading and vehicles under passenger schemes).
- ship-generated waste service;
- goods handling services (loading, stowing, unloading, maritime transit and transfer of goods).

2.- As stated in Article 104 of Royal Legislative Decree 2/2011 of 5 September, approving the Revised Text of the Law on State Ports and Merchant Shipping, the services provided in ports of general interest are categorised as general services, port services and aid to navigation services. The services to which the Proposal for a Regulation refers essentially correspond to the port services from our specific legislation, although the regulation includes dredging and bunkering services, which are not considered port services in the current law on ports.

3.- The economic regime for Spanish ports is based on the following principles:

- Principle of economic self-sufficiency of the port system as a whole and of each of the port authorities in a framework of economic/financial management autonomy for the public port bodies.
To ensure the economic self-sufficiency of the port system and of each of the port authorities, in each port authority's business plan, Puertos del Estado agrees with the port authority the annual profitability targets, the average net return on the non-current asset considered reasonable and other management objectives, addressing the foreseeable evolution in demand, the consequent investment needs of each port authority, its physical characteristics and specific conditions as well as its competitive position, taking into account the annual profitability target set for the entire port system (2.5%, revisable in the Law on General State Budgets).
- Existence of an Inter-port Compensation Fund, which is the instrument for redistributing resources from the state port system and is funded through contributions from the port authorities (80% of the income accrued through aid to navigation charges related to vessels whose characteristics make them subject to the vessel charge, between 4% and 12% of the operating income for the year, excluding depreciation and other extraordinary income and some other items).
- Port charges are fees and therefore, in addition to port legislation, they are governed by Law 8/1989, of 13 April, on Public Fees and Prices, and Law 58/2003, of 17 December, on General Taxation and the regulations issued in the development of this legislation. It is thus worth noting here that, under the Constitution, the essential elements of these fees must be regulated by law (i.e. the Law on General State Budgets). These fees are:

    - occupancy fee, for the private occupation of the public port domain;
    - activity fee, for engaging in commercial, industrial and service activities in the public domain;
    - usage fees, for special use of port facilities. These are:

- vessel fee;
- passenger fee;
- goods fee;
- fresh fish fee;
- sport and recreational craft fee;
- fee for special use of the transit zone.

- aid to navigation fee, for the maritime signalling service.

For all these fees, the current law on ports defines the chargeable event, the chargeable person, the tax base and the tax payable, in the most general case. It also set out discounts and exemptions, where applicable.

Finally, as part of the annual business plan, every port authority proposes three correction coefficients that are applied respectively to the basic amounts of the vessel fees, passenger fees and goods fees, within the limitations laid down in Article 166 of Royal Legislative Decree 2/2011, of 5 September, approving the Revised Text of the Law on State Ports and Merchant Shipping.

4.- The Spanish port model establishes a state-owned body to control and coordinate the port system – Puertos del Estado – of which there are few international examples. The main resource of Puertos del Estado is 4% of the income accrued by port authorities as fees, except for the port authorities located in the Balearic and Canary Islands and in Ceuta and Melilla, which contribute 2%.

5.- Despite the state owning the ports of general interest, the chairmen of the port authorities – who carry out important duties – are nominated by the Governing Councils of the Autonomous Communities to the Minister of Public Works, who will appoint the nominee. Thus port authorities have more board members from the Autonomous Communities and local authorities than from the central government on their boards of directors.

II.2.- Impact of the Proposal for a Regulation on the Spanish port model

1.- In terms of the provision of port services:
- The proposed regulation applies to all port services set out in Article 108 of Royal Legislative Decree 2/2011, of 5 September. Furthermore, it applies to bunkering and dredging, which are not considered port services in Spanish legislation.

- **The Proposal for a Regulation and the Spanish port model share the same principle of freedom to provide services**. In the regulation, the sole requirements to be imposed only relate to professional qualifications, the necessary equipment, maritime safety, general safety and security in the port and relevant environmental requirements. In Spanish legislation, these requirements relate to the regulating specifications and particular requirements of the corresponding service, which may include terms that go beyond those required in the regulation.
- The Proposal for a Regulation allows the number of service providers to be limited due to space constraints that are documented through a port development plan, or due to public service obligations. Spanish legislation also allows the number of port service providers to be limited 'solely for reasons of space availability, facility capacity, safety, environmental regulations or due to other objective reasons related to competition conditions and, in all cases, reasons that are duly justified'. **It is thus clear that the draft regulation is much more restrictive in terms of allowing the number of providers to be limited.**
- **Both the draft regulation and the current port legislation provide that, when the number of service providers is limited, market access shall take place through a non-discriminatory, transparent public tender.** The only difference – the legal scope of which will have to be established – is that the regulation expressly states that the provider or providers selected will conclude a port service contract with the managing body of the port, while in Spanish legislation the qualifying authorisation is a licence.
- The draft regulation lays down an especially important clause (see point nine in Section 3.1 of the Explanatory Memorandum of the draft regulation, which surprisingly does not appear in Article 13 on port service charges) that is not developed in Spanish legislation, which states that, if the service providers have not been designated through a public tendering process, the necessary steps must be taken to ensure that the price for the service is transparent and non-discriminatory, such that 'the total charges do not exceed the total incurred costs and a reasonable profit'.

In effect, if the port authority – Spanish in this case – does not limit the number of providers on grounds that the requirements for this as provided in our legislation have not been met, but rather the first providers in fact create an economic barrier – particularly if it is a capital-intensive service – that can discourage the presence of new providers, making it possible for those already established to dominate the market.

The Proposal for a Regulation presents a principle for establishing the service fee of equivalence to the cost plus a reasonable profit.

This principle is not as developed in Spanish legislation, which generally proposes 'maximum fees' that are very far from the real cost of providing the service for certain traffic volumes, as well as principles of transparency and non-discrimination, but without being any more precise.

- The public service obligations, which, in accordance with the draft regulation, where imposed seek to ensure the availability (uninterrupted throughout the day, night, week and year) of the service to all users and that the service provided is affordable for certain user categories. However, in the Spanish legislation on ports, public service obligations are also linked to universal coverage, continuity and regularity, along with submission to the charging power of the port authority, but two additional elements are also introduced: cooperation with the port authority and the maritime authorities and, where appropriate, other service providers in rescuing, firefighting and fighting against pollution; as well as collaborating on practical training for the service using the appropriate means (a requirement that is included in the draft regulation but not as a public service obligation).
- **Excluding the goods handling service from the scope of the freedom to provide services** seems to confirm the Commission's principle of not legislating on this matter – given the disputes arising from past attempts – and analysis on a case by case basis. Specifically, Spain is currently undergoing an infringement procedure before the EU Court of Justice over its current cargo-handling model.

2.- In terms of the economic regimen of Spanish ports:

- Article 14(3) of the draft regulation sets out that the 'the structure and the level of port infrastructure charges shall be defined in an autonomous way by the managing body of the port [in the case of Spain, the port authority] according to its own commercial strategy and investment plan reflecting competitive conditions of the relevant market'. This runs counter to Spanish regulations. Firstly, the financial charges for using port infrastructures are fees that must essentially be regulated by law, as established in many Constitutional Court judgments, such that any modification to them, including changes to the amount, must be effected through the Law on General State Budgets. Secondly, according to the procedure set out in the law on ports, in terms of port fees, the preparation of the draft law on budgets includes the business plans that port authorities agree with the body Puertos del Estado, which set out, among other things, the profitability of the port authorities, correction coefficients, etc.
- The draft regulation obliges each Member State to create a supervisory body that is independent of any port managing body and of the port service providers, such that in Member States where the state retains ownership or control of the ports or the managing bodies of the port, this will ensure an effective structural separation of the functions related to supervision and control of the regulation and the activities associated with this ownership or this control.

As has been stated, in Spanish legislation, ownership of the ports falls to the state, although it does not exercise total effective control given the criteria for appointing and designating their chairmen and the composition of their boards of directors. Furthermore, the body Puertos del Estado, which is in charge of coordinating and controlling the port system – a concept that is completely ignored in the draft regulation text – and of applying the Government's policy, sees its functions being drastically reduced and, moreover, would in its current form be unable to fulfil the role of independent supervisory body as described in the regulation.

With the model from the proposal, in the case of Spain, as the state is the responsible body it would not play any role in setting, for example, the infrastructure charges. It would therefore lose the option of including this in higher level import-export policy.

The draft regulation does not seem to take into account that in the majority of Spanish ports – the situation in other European ports must not be very different – there is a very significant percentage of captive traffic, meaning that there may be opposing interests between the observations of the managing body of the port and the private port service providers in this port and the observations at system level, considering the ports as essential elements in the competitiveness of our imports and exports.

- On the other hand, the compatibility of the Inter-port Compensation Fund provided in Spanish legislation will have to be examined in terms of the concept of port autonomy that seems to arise from the draft regulation and, in particular, whether its counterpart – exemption from corporation tax – can be considered as State aid.

3.- In conclusion, the Proposal for a Regulation would require a very substantial modification to the Spanish port model and does not take the special features of this model into consideration. On the other hand, it does not contribute any new elements that will make it possible to surpass or enhance the competitiveness of Spanish ports, or the port system as a whole, in terms of the distribution of traffic amongst European ports.

III. Legal aspects: application of the principle of subsidiarity

Although these aspects go beyond the scope of this reasoned opinion, it is necessary to state that, on the subject of ports, the ownership and management models for the ports respond to a complex set of circumstances – historical, geopolitical, economic, etc. – that make it very difficult to create the uniformity that the draft regulation appears to seek.

In fact, there are ports in Europe that are state-, regionally-, municipally- and privately-owned (the main English ports), with 'landlord' and 'tool port' management models, mixed models, etc., each of which has its own rationale.

Indeed, according to the content of the draft regulation, the inclusion of any such ports in the TEN-T will not require them to be stripped of their special features, nor do we believe that it requires any uniform models, and therefore we consider that there is no need for any sectoral regulation that regulates the activity, as it is sufficient to apply the principles of the Treaty and the current general provisions (directives and regulations) to the port sector are sufficient. In fact, the legal basis for the draft regulation is found in Article 100(2) of the Treaty on the Functioning of the European Union. Articles 58, 90 and 100 of the Treaty on the Functioning of the European Union extend the objectives of a true internal market in the context of the common transport policy to the ports. Other modes of transport are included in the TEN-T and it does not seem necessary to propose a uniform management policy for those either.

CONCLUSION

For the abovementioned reasons, the Joint Committee for European Union Affairs considers that the 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 does not comply with the principle of subsidiarity laid down in the current Treaty on European Union.

This reasoned opinion shall be conveyed to the European Parliament, to the Council and to the European Commission, within the framework of political dialogue between national parliaments and the EU institutions.