



# ETA position on the Draft Regulation on Port Services to be voted upon in the EP

EU PORT PACKAGE III FAILS THE TEST ON BETTER REGULATION AND PROPORTIONALITY.

### 1. EP Plenary Sessions on 7th March (discussion) + 8<sup>th</sup> March 2016 (vote)

On 25th of January 2016 the Transport and Tourism Committee of the European Parliament (“TRAN”) adopted the [Draft Report](#) following compromise amendments of Rapporteur Knut Fleckenstein (S&D, Hamburg) on the proposal for a regulation establishing a legislative framework for port services and ports.

The voting outcome resulted into 29 votes in favour, 13 against adopting and 3 abstentions.

The mandate to the TRAN Committee to enter into negotiations with the Council and the European Commission [Rule 73(2)] did not get the required qualified majority of 25 votes, being rejected by 1 vote.

The Plenary of the European Parliament shall consider whether such mandate should nevertheless be given, either on the adopted text or an amended version. Discussions and voting shall take place on 7th and 8th March 2016.

### 2. ETA calls for rejection

The ETA maintains its position that the Draft Regulation should be rejected or withdrawn by the Commission under the European Commission’s Regulatory Fitness and Performance programme (“REFIT”).

It fails to address the challenges that the Commission brought forward for its proposed legislation.

### 3. Objectives of the European Commission

The European Commission, by launching this third attempt to regulate port services and ports “*Establishing a framework on market access to port services and the financial transparency of ports*”, aims to contribute to more efficient, interconnected and sustainable functioning of TEN-T ports, including a.o.:

- Improving the performance of ports through counteracting possible market abuses and increasing efficiency of port services
- Modernising port services and operations
- Attracting investment in ports

#### 4. Better Regulation and Proportionality failure

##### *Definition of port services*

In its amended format put to vote, subject to further possible amendments tabled in Plenary, the Draft Regulation would be “*establishing a framework for the organisation of port services and for financial transparency of ports*”.

While agreeing on the Rapporteur’s opinion that “*the scope of the regulation should only include those port services that are offered directly to the users*” so that dredging cannot be called a “port service”, port services in actual fact include:

- bunkering
- port reception facilities
- cargo handling
- mooring
- passenger services
- pilotage
- towage

##### *Scope of Chapter II of the Regulation*

Article 11 of the adopted Draft limits the scope of the whole Chapter II (now called “*Organisation of port services*” instead of “*Market Access*”), with the exception of article 10a (on training requirements and labour protection), to :

- bunkering
- port reception facilities
- mooring
- towage

This means that the legal framework would only organise 4 port services out of 7. Consequently, the Draft gives the impression that the other services, unlike towage, either would not have to be organised by a European legal framework, or are not in need of enhanced efficiency, modernising, lifting of potential market access barriers nor attracting investments.

Only 2 out of 3 “technical-nautical services” would be covered.

The Commission itself, when quoting from its impact assessments has acknowledged that, “*in terms of internal repartition of costs [i.e. port charges] port infrastructure charges represent between 5-10%, technical-nautical services [including pilotage] between 10-15%, cargo handling between 45-60%.*”

This selective, unfair and limited application reveals total inconsistency with the objectives that the Commission brought forward to maintain its proposal.

Consequently, it is immediately clear that this Regulation, apart from Chapter III on transparency for port finances, would not stand the test of Better Regulation and/or proportionality as it would limit its intended impact to a fraction of port services, contributing the least to port charges, as opposed to those services not falling under the scope.

## **5. No exemption for towage: denial of the vital contribution of towage to safety in ports**

By not exempting towage, like pilotage, from Chapter II on the organisation of port services (article 11) the Draft Regulation negates the vital role of towage providers in safe operations and environmental protection in ports.

The Rapporteur acknowledges “*the high relevance of pilotage for safe and secure port operations*” in his Explanatory Statement; however, no single port user and/or port authority would not consider towage as equally indispensable to maintain the highest level of navigational safety.

Towage operators often work within a framework of public service obligation contracts by virtue of which they are obliged to provide safe and efficient harbour towage services and response to safety related incidents.

Major economic and environmental catastrophes in European ports are often avoided thanks to prompt and adequate intervention of tugs.

Two recent examples among several others were the successful re-floating of a mega carrier, like the CSCL Indian Ocean, with its cargo of up to 18,900 TEU in February 2016 on the Elbe, requiring assistance of 12 tugs. See: <https://gcaptain.com/watch-video-captures-refloating-of-cscl-indian-ocean/> and the avoidance of collision in the port of Valencia by ETA member tugs.

See: <http://worldmaritimenews.com/archives/183268/video-near-miss-for-boxship-giants-in-valencia/>.

## **6. Lacking of clear rules on state aid in ports**

Whereas Rapporteur Fleckenstein had repeatedly underlined the link between the Port Regulation and state aid rules for ports securing investments for sustainable port infrastructure, the review of the scope of the Block Exemption Regulation, announced repeatedly by the Commission is still lacking. This undermines the relevance of Chapter III on Transparency, as it proposes a set of rules on the use of public funds, the definition of which is not clarified hitherto in state aid rules.