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Project	TRAINING4PORT	
Work Package	WP3-Setting up a supportive environment for labour force competence	
Activity	Survey of the existing regulatory framework for jobs in ports and of the modalities of employment of the workforce in ports	
Result	SURVEY OF THE EXISTING REGULATORY FOR JOBS IN PORTS AND OF PORT WORKERS EMPLOYMENT MODALITIES	
Responsible	UPIR	
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1. The background

The Work package 3 goal is to identify if the existing port activity regulatory framework refers in particular to port labour force in involved countries

The term „port workers” and „dockers” used to refer to jobs which are predominantly manual and to workers engaged in the loading and unloading of ships in ports and in ancillary services such as the checking, storage and intra-port transportation of cargo, and operations at passenger terminals.

The exact meaning of the notion of 'dock work' was repeatedly discussed at the level of the International Labour Organization (ILO) , but the invariable outcome was that the term can only be defined according to national law or practice, and this compromise solution has been enshrined in, for example, ILO Dock Work Convention No. 13717. Currently, there does not exist a generally applicable definition of the notion of ‘port labour ’ at EU level.

EVOLUTION OF PORT INSTITUTIONAL FRAMEWORKS

Private sector investment and involvement in ports emerged as a significant issue in the 1980s. By this time, many ports had become bottlenecks to the efficient distribution chains of which they are an essential component. Three main problems, illustrated by port congestion and consequent chronic service failures, contributed to the gradual deterioration of service quality during this period.

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The first problem was restrictive labor practices. Increasingly after World War II, antiquated work practices and methods for matching available labor with occasional work—practices that developed during a previous era characterized by breakbulk cargo handling—needed to be transformed and renegotiated to adjust to modern bulk handling methods, unitized handling, and containerization. All of these developments resulted in a rapid modernization of port handling equipment. At the start of this process, labor unions often refused to accept reductions in the labor force and ignored the need to upgrade skills. Later, however, unions realized that port reform was a necessity. Enlightened labor leaders accepted moderate reforms. It is no longer realistic for dock workers and their trade unions to oppose institutional reform and the technological advances that frequently precede and accompany it. The second reason why many ports failed to respond adequately to the increased demands imposed on them was centralized government control in the port sector. Particularly between 1960 and 1980, central planning (in the port sector as well as in other sectors) prevailed not only as a norm in socialist economies, but also in many western and developing countries where national port authorities were often promoted by international development banks. Slow-paced and rigidly hierarchical planning, control, and command structures often accompanied central planning. Only in the 1980s did the dismantling of communist systems and the increasing introduction of market-oriented policies on a worldwide basis open the way for decentralized port management and for reduced government intervention in port affairs. The third reason for a lack of port service quality was the inability or unwillingness of many governments to invest in expensive port infrastructure or the “misinvestment” in infrastructure (providing facilities that were badly matched with the needs of foreign trade and shipping). During this period, a number of beautifully constructed port complexes became “white elephants” when expected demand failed to materialize. As a result of systemic failures in managing port development, governments have learned to rely increasingly on private investors to reduce ports’ reliance on state budgets and to spread investment risks through joint undertakings. During this period, fundamental questions arose about the appropriate division of responsibilities between the public and private sectors. “Boundary line” issues came into sharp focus during the 1980s and 1990s. Policy makers became increasingly aware of the need for coordination among various branches of government and for consultation with diverse port interests. They realized clearly that port development had collateral consequences and effects on public interests in land use, environmental

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impact, job creation, and economic stimulation for economically blighted areas. Moreover, among some leaders, it became increasingly clear that large-scale government involvement in port operations was self-defeating and destructive of private initiative. They came to realize that the role of government in a market economy should focus on the provision of public goods (goods and services that the private sector has no adequate incentive to provide and, consequently, are undersupplied without some form of government intervention). In many countries today, still another trend has emerged: the private provision of public services. Increasingly, governments have transferred public tasks to private contractors. Outsourcing of key functions and roles has had a major impact on redrawing traditional boundary lines in the port sector. Hence, in many ports today, the public sector mainly acts as planner, facilitator, developer, and regulator while providing connectivity to the hinterland, whereas the private sector acts as service provider, operator, and sometimes also developer. Experimentation in shifting the boundary line that divides the public and private sectors has resulted in a healthy pragmatism. At the same time, various types of port terminals have become highly specialized in the cargo handling services they provide and manifest fewer of the characteristics of a public good. New container terminals have been built with private capital, and other container terminals have been redeveloped and recapitalized through some form of private sector participation. Increasingly, ports are being integrated into global logistics chains, and the public benefits they provide are taking on regional and global attributes. The value of services provided by regional ports increasingly transcends the interests of local users, and benefits businesses and communities located beyond regional and national borders. This global diffusion of benefits poses some interesting challenges with respect to the need for large-scale investments in the sector. At the same time private port service providers themselves have become increasingly global in scope and scale. Even more recently, a number of strategic alliances have formed both within the global shipping industry and the port services industry. These alliances have profound implications for the ways ports are financed, regulated, and operated. Confronted with these global shipping and port service powers, port authorities will increasingly have challenges in defending public and local interests. Container terminal operators with global coverage, sometimes in alliance with major shipping lines, may be tempted to take advantage of their dominant position to strengthen their network, thereby reducing the scope of competition mainly at the expense of public interests. Moreover, countervailing powers at an international level that have not yet emerged are expected to do so soon

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due to the absence of suitable national regulating structures. At port level, a strict organizational separation of the commercial and regulating tasks of port management is required to safeguard public interests.

Many governments are directly or indirectly involved in port development. They often use a “growth pole” argument to justify the direct financing of basic port infrastructure. This growth pole rationale derives from the belief that investments in port assets have strong direct and indirect multiplier effects on the entire national economy and, further, that the commitment of public resources is necessary to encourage coinvestment by the commercial and industrial sectors. These sectors are thus stimulated to make investments that they would not make in the absence of public seed investment in port infrastructure. However, determining causal links between public investment and specific commercial activities and investments is difficult and at times speculative. Still, it is important that governments envision and articulate future development scenarios, maintain frequent consultation with the private sector, and implement public policies that are applied consistently and that enable the private sector to invest with confidence in projects that support the stated public policy objectives. On the other hand, port operations are businesses in their own right and should be managed to achieve optimal utilization of capital. Investments in port assets are affected by risk, competition for land and capital, or other factors in the competitive business environment. Subsidies and government-provided incentives distort the allocation of resources for port development and may result in over or underinvestment. It is the delicate alignment of public and private interests that determines the structure of port management and port development policy. A full spectrum of institutional frameworks is available, differing primarily in where the boundary line is drawn between the public and private sectors. At one end of this spectrum, full public control over planning, regulation, and operations results in a “service port.” At the other end, the almost total absence of public ownership, control, or regulatory oversight results in a “fully privatized port.” In a clear trend, the alignment of public and private interests in recent years has resulted in a diminishing role for governments in the port industry. The total absence of public involvement in the port sector, however, still remains an exception, limited primarily to specialized ports and terminals.

Role of a Port Authority

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Ports usually have a governing body referred to as the port authority, port management, or port administration. Port authority is used widely to indicate any of these three terms. The term port authority has been defined in various ways. In 1977, a commission of the European Union (EU) defined a port authority as a “State, Municipal, public, or private body, which is largely responsible for the tasks of construction, administration and sometimes the operation of port facilities and, in certain circumstances, for security.” This definition is sufficiently broad to accommodate the various port management models existing within the EU and elsewhere. Ports authorities may be established at all levels of government: national, regional, provincial, or local. The most common form is a local port authority, an authority administering only one port area. However, national port authorities still exist in various countries such as Tanzania, Sri Lanka, Nigeria, and Aruba. The United Nations Conference on Trade and Development (UNCTAD) *Handbook for Port Planners in Developing Countries* lists the statutory powers of a national port authority as follows (on the assumption that operational decisions will be taken locally):

- *Investment*: Power to approve proposals for port investments in amounts above a certain figure. The criterion for approval would be that the proposal was broadly in accordance with a national plan, which the authority would maintain.
- *Financial policy*: Power to set common financial objectives for ports (for example, required return on investment defined on a common basis), with a common policy on what infrastructure will be funded centrally versus locally, and advising the government on loan applications.
- *Tariff policy*: Power to regulate rates and charges as required to protect the public interest.
- *Labor policy*: Power to set common recruitment standards, a common wage structure, and common qualifications for promotion; and the power to approve common labor union procedures.
- *Licensing*: When appropriate, power to establish principles for licensing of port employees or agents.
- *Information and research*: Power to collect, collate, analyze, and disseminate statistical information on port activity for general use, and to sponsor research into port matters as required.
- *Legal*: Power to act as legal advisor to local port authorities.

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Increasingly, central governments implement port policies through the allocation of resources rather than through the exercise of wide-ranging regulatory powers. While central governments should pursue macroeconomic objectives through an active port policy, port authority objectives should be more narrowly focused on port finances and operations.

It is a widely accepted opinion among port specialists that a port authority should have as a principal objective the full recovery of all port-related costs, including capital costs, plus an adequate return on capital. The full recovery of costs will help a port authority to:

- Maintain internal cost discipline.
- Attract outside investment and establish secure long-term cash flows.
- Stimulate innovation in the various functional areas to guarantee a long-term balance between costs and revenues, especially when faced with innovations by terminal operators, port users, rival ports, and hinterland operators.
- Generate internal cash flows needed to replace and expand port infrastructure and superstructure.
- Compete according to the rules of the market system, without excessive distortions of competition.
- Put limits on cross-subsidization, which may be rational from a marketing point of view (market penetration, traffic attraction), but which can undermine financial performance.
- Avoid dissipation of the port authority's asset base to satisfy objectives of third parties (for example, port users demanding the use of land in the port area without regard to the land's most economic use or port and city administrations using port authority assets to pursue general city goals).

Full cost recovery should be viewed as a minimum port authority objective; once this objective has been achieved, however, the port authority can pursue other-than-financial objectives considered desirable by the government or by itself.

Role of Port Operators

Just as central governments and port authorities play key roles in the port communities, so too do private port operators (such as stevedoring firms, cargo handling companies, and terminal operators). Port operators typically pursue

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conventional microeconomic objectives, such as profit maximization, growth, and additional market share. Only if port operators are free to pursue such objectives can the benefits of a market-oriented system be achieved.

Roles of a Transport Ministry

In a market-oriented economic system, the ministry of transport typically performs a variety of functions at a national level. With respect to coastline and port issues, the main tasks and responsibilities of the ministry can be summarized as follows:

- ***Policy making:*** The ministry develops transport and port policies related to:
 - ~ Planning and development of a basic maritime infrastructure, including coastline defenses (shore protection), port entrances, lighthouses and aids to navigation, and navigable sea routes and canals.
 - ~ Planning and development of existing and new port areas (location, function, or type of management).
 - ~ Planning and development of port hinterland connections (roads, railways, territorial waterways, and pipelines).
- ***Legislation:*** The ministry drafts and implements transport and port laws, national regulations, and decrees. It is responsible for incorporating relevant elements of international conventions into national legislation for signature members.
- ***International relations:*** Specialized departments of the ministry represent the country in bilateral and multilateral port and shipping forums. The ministry may also negotiate agreements with neighboring countries relating to water-borne or intermodal transit privileges.
- ***Financial and economic affairs:*** A ministerial department is usually responsible for planning and financing national projects. In many countries, a ministry of transport also finances basic port infrastructure as well as roads, waterways, and railways connecting ports with their hinterland. It should be able to carry out financial and economic analyses and assess the socioeconomic and financial feasibility of projects in the context of national policies and priorities.

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• *Auditing:* These functions should be performed independently from the affected line organization and are usually included in a staff office. The auditors should report directly to the minister.

In many countries, transport directorates are established as independent bodies within a ministry and perform an executive function. They are usually responsible for one of the modes of transport, for example, the maritime and ports directorate (maritime administration).

The principal elements of a typical maritime and ports directorate are:

- Ship inspections and register of shipping (oversight of ship safety and manning conditions).
- Traffic safety and environment (self movement of shipping and protection of the marine environment).
- Maritime education and training (maritime academies, merchant officers exams, and licensing of seafarers).
- Ports (execution of national port policy).
- Hydrotechnical construction (construction of protective works, sea locks, port entrances, and others).
- Port state control on the basis of the Paris and Tokyo memorandum of understanding terms.
- Security compliance (International Ship and Port Facility Security Code).
- Investigation into and adjudication of any maritime incident, such as fire on board a vessel, collision, stranding, piracy, or similar event.
- Performance of regulatory and licensing functions in respect to structures, partly or entirely founded on the seabed within the territorial waters, in the exclusive economic zone of a country, or in any navigable water or on any beach within the territory of a country.
- Vessel traffic systems and aids to navigation (construction and maintenance).
- Search and rescue.

Port Functions

Within the port system, one or more organizations fill the following roles:

- Landlord for private entities offering a variety of services.
- Regulator of economic activity and operations.

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- Regulator of marine safety, security, and environmental control.
- Planning for future operations and capital investments.
- Operator of nautical services and facilities.
- Marketer and promoter of port services and economic development.
- Cargo handler and storer.
- Provider of ancillary activities.

In view of the strategic significance of land, port property is rarely sold outright to private parties because of its direct and indirect effects on regional and often national economy and public welfare, its intrinsic value, and possible scarcity. Therefore, a key role for many port authorities is that of the landlord with the responsibility to manage the real estate within the port area. This management includes the economic exploitation, the long-term development, and the upkeep of basic port infrastructure, such as fairways, berths, access roads, and tunnels.

Port authorities often have broad regulatory powers relating to both shipping and port operations. The authority is responsible for applying conventions, laws, rules, and regulations. Generally, as a public organ it is responsible for observance of conventions and laws regarding public safety and security, environment, navigation, and health care. Port authorities also issue port bylaws, comprising many rules and regulations with respect to the behavior of vessels in port, use of port areas, and other issues. Often, extensive police powers are also assigned to the port authority.

To conclude, central governments should establish a national port policy that supports national economic objectives and creates a reasonable framework for port development and port operations.

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2. General consideration about port regulation

It is often thought that the sole purpose of a ports law is to create an institutional framework to develop and manage ports. It should, however, be emphasized that a ports law should also establish a flexible business framework that enables a port authority to compete successfully in national and international transport markets.

A ports law often creates one or more port authorities, as well as a host of other port-related bodies, such as a ports council/commission or similar advisory or regulatory body. It might also set operational conditions for private operators. Finally, such a law may regulate organizational and financial relations between public organs (such as the state, regional governments, or municipalities) and the maritime administration. There are various legal acts that relate to ports policy, port management, and port operations.

Particularly in countries where the port sector is still under development, the national government has an important role to play. This role may be expressed in a national ports policy formally authorized by the parliament. The preparation and implementation of this policy usually is the responsibility of a transport or port ministry. Sometimes, to involve major sectors of the ports community in the development, a national ports commission (or ports council) is established by law. Generally, the commission has an advisory role. The general objective of a national ports commission is to provide input to the development of a national ports policy. Generally, the commission provides this advice to the council of ministers through the minister of transport. If a country decides to institute a ports commission, it should be empowered with the necessary tools to function effectively. The costs of the commission should be borne by the state to ensure its independent status.

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A port authority is usually established by a specific ports law, either as a public or commercial entity (for example, joint stock or limited liability company). Some countries have opted for a corporatized port authority. In these countries, new port laws are aimed at converting service ports into landlord ports, requiring the separation of public landlord responsibilities from cargo handling activities. New port laws regulating the tasks and responsibilities of a (public) landlord port authority have been combined recently with the establishment of private operating companies in accordance with the national commercial code.

A ports law may be very detailed or merely set forth basic principles of port management and operation. Regardless of the form adopted for the port's regime, to create a solid basis for clearly delineating port functions and responsibilities, a core set of provisions should be included. These provisions and their key features are described below.

- **A Preface** states the objective of the law and some general conditions. The approach adopted is a function of the underlying legal system. For example, some countries use a combination of statute and implementing regulations; others pass a decree that applies a privatization or concession law to a port or ports. The objective might be to create new port authorities or to reform an existing port authority. Also, the preface should indicate whether transfer of rights to private parties (for example, lease, concession, or build-operate-transfer [BOT]) is permitted. It might be necessary in such instances to make corresponding changes in laws governing public property. Finally, the law should regulate the organizational, financial, and fiscal relations between the related public organs (such as the national government, regional governments, and municipalities) as well as with regulators, such as the maritime administration, the fiscal authority, and the competition commission. Two approaches have been developed for drafting the preface of a typical port law: a preface stating only the objective of the law, or a preface of general conditions, elaborating on the objective and a number of boundary conditions. In several cases, the definitions used in the law are included in the first section.
- The second element of a ports law should comprise **definitions** of the main terms used in the law. The port business, especially as a specific mix of public and private interests and financiers, will require that the interplay of these

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interests be balanced and result in well-circumscribed functions. The law should likewise define maritime and port infrastructure, identifying which are under the authority of the state and which are under the authority of a port authority. Sometimes it may be necessary to designate several types of ports, such as “ports of national interest” and “ports of regional interest,” or as in the French Ports Law of 1965, *Ports Autonomes and Ports d’Intérêt National*, with each exhibiting its own definition.

- The third section of a ports law should delineate the objectives and functions of a port authority. Usually, a port authority exercises jurisdiction over a port territory, which should constitute an economic and functional unit. The establishment of a port authority as this legal entity is one of the major elements of a ports law. The law provides the legal status for the port authority, which might be a public entity or a corporate entity under the commercial code of the relevant country, such as a joint stock company. The law should also indicate which public entity has the right to establish a port authority in the event that the state is not doing so. This might be a region, province, city, or a combination. In the case of corporatized or privatized port authorities, linkages will be needed to the mercantile, corporate, or commercial code. Provisions should be included on shareholding, for example, or conforming changes made to commercial or corporate laws. There is an important point affecting port authorities established as joint stock companies. Generally, port authorities are responsible for operating the entire port. In the event of a landlord port situation, a corporatized or privatized port authority must ensure a level playing field among many terminal operators and other service providers. To avoid conflicts of interest, the law should explicitly regulate the powers and duties of the port authority in relation to private operators with respect to investments and share participation. Powers and duties of a port authority regarding land management require specific attention in the law. A landlord port authority is responsible for land management and overall port development. Special attention should be paid to the regulation of ownership and use of port land under the law. A port authority may own the land or have a perpetual or time-specific right to use the land. Powers to act as a landlord may need to be specifically elaborated, as well as the limitations of such powers, such as the interdiction of the sale of port land. While the authority is engaged in, or provides for, construction of operational infrastructure, the maintenance of such infrastructure constitutes a duty for the authority. The

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ports law should specify the exact responsibilities of the port authority and those of the state with respect to investments in basic and operational infrastructure, maritime accesses, port access roads, and rail and waterway infrastructure as well as hinterland connections. Generally, the objective of a port authority is to efficiently and economically manage the port. In a public landlord port, its objectives should be aligned with the macroeconomic goals of the state and the needs of the region, such as the creation of jobs, strengthening of the economic structure, and so forth

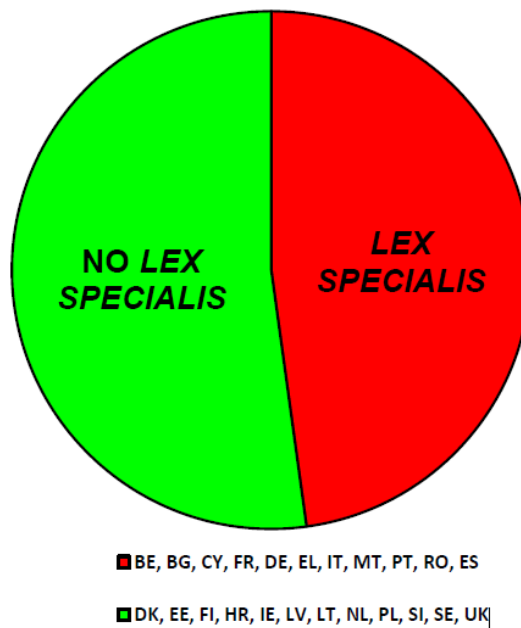
Effects of port reform on the existing work force.

Port reform is often triggered by overstaffing at ports and restrictive labor practices. However, the objective of a new ports law is not labor reform, but port reform. Labor reform may be a by-product when a port must rationalize its workforce to improve efficiency and reduce costs. A ports law might set conditions for the transfer of personnel from the existing port authority to the new one. Since port reform is often accompanied by a reduction of the size of the port's workforce, the ports law may establish and regulate a port workers fund to soften the impact of labor force reductions. The fund can be used for redundancy payments or retraining programs. *Replacing top management* : ports functioning within the framework of competitive markets require a different management ethic to lead the difficult reform process and steer the new port authority safely through the shoals of competition and other commercial activities.

An inventory of the sources of law in the EU Member States shows a wide variety in the legal arrangements. First of all, there is no harmony in the implementation of ILO instruments on dock work. Secondly, there are States where rules on port labour are laid down in specific national laws and regulations, while other countries lack such special instruments and rely entirely on the framework of general labour law. Generally, specific laws and regulations entail a higher level of regulation. Thirdly, there are considerable differences in the practice of collective bargaining, which may take place at national, sectoral, port or company level, while there are also ports and terminals where no collective agreements apply at all. In many EU ports, unwritten customs or usages continue to play a significant role.

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In conclusion, in order to allow an assessment of the extent to which port labour is today still subject to specific laws and regulations, the next figure shows which EU Member States apply specific laws and regulations (*lex specialis*) on port labour. Strikingly, the groups have an equal share.



Levels of collective bargaining (2013)

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10, 2010

	National	Port	Company
BE			
BG			
HR			
CY			
DE			
DK			
EE			
EL			
ES			
FI			
FR			
IE			
IT			
LV			
LT			
MT			
NL			
PL			
PT			
RO			
SE			
SI			
UK			
Total	11	6	15

	Collective bargaining agreement in existence
	No agreements or no data

The analysis of national port labour arrangements shows a considerable variety of employment systems. The port workers of the EU are employed by a diversity of employers. Some workers are still employed by public port authorities (especially, crane drivers, for example in Cyprus, to a limited extent also in Belgium, Denmark, Finland and France) or by commercial service providers controlled by a state-owned entity (Poland). Yet other port workers are self-employed (Cyprus, Greece, Malta); these workers are mostly united in professional associations, some of which at the same time act as employers of other workers.

The workers include not only permanent workers employed under an employment contract for an indefinite or a fixed term concluded with an individual employer, but

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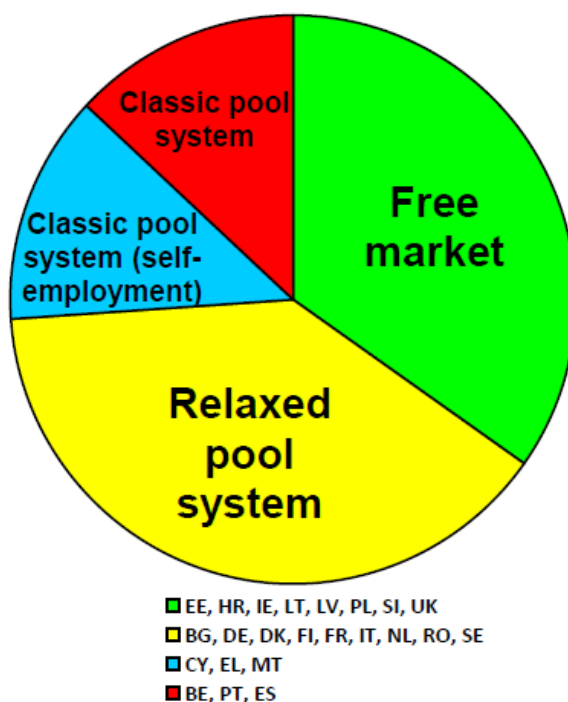
also casual workers employed under specific port labour arrangements who are entitled to unemployment benefit or a similar payment when they are not working. Next, many ports also rely on more or less irregularly employed supplementary workers (auxiliary or occasional workers, including, in some ports, seasonal workers or temporary agency or interim workers).

Port labour arrangements in the EU are extremely varied in terms of the level of regulation. The two extremes in the spectrum are (1) a strictly regulated pool system based on a reservation of market access for authorised operators-employers and an exclusive or preferential right of employment for registered pool workers; and (2) a fully liberalised or deregulated system, where individual port employers are free to select workers, to rely on general temporary work agencies, and where employment is fully governed by general labour law.

Some EU Member States indeed have a regime of registration of port workers, which may be based on either law or agreement, while other countries have no such arrangements at all. In most but not all cases, registration entitles the worker to exclusivity or priority of employment. In some countries, registration is no longer applied or has fallen into disuse at privatised terminals (Greece, Poland), while in others there is some debate over whether registration actually takes place (Finland, Sweden).

A further distinction can be made between (1) classic, fully regulated pool or registration systems (of which Belgium, more in particular Antwerp, clearly applies the most rigid system); (2) classic pool or registration systems based on self-employment; (3) relaxed pool or registration systems (characterised by less absolute restrictions or partly liberalised rules); and (4) free labour markets (for the sake of simplification, we have included Slovenia in the latter category although here a considerable number of workers are employees of a publicly owned comprehensive port authority, so the case may also be considered a category in its own right).

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Given the wide array of employment relationships, the number of employers of port workers in the 23 maritime Member States of the European Union is extremely difficult to estimate, but it is probably in the order of 2,200. The number of port workers totals around 115,000.

The table below summarises available estimates on the numbers of port employers and port workers in the EU Member States.

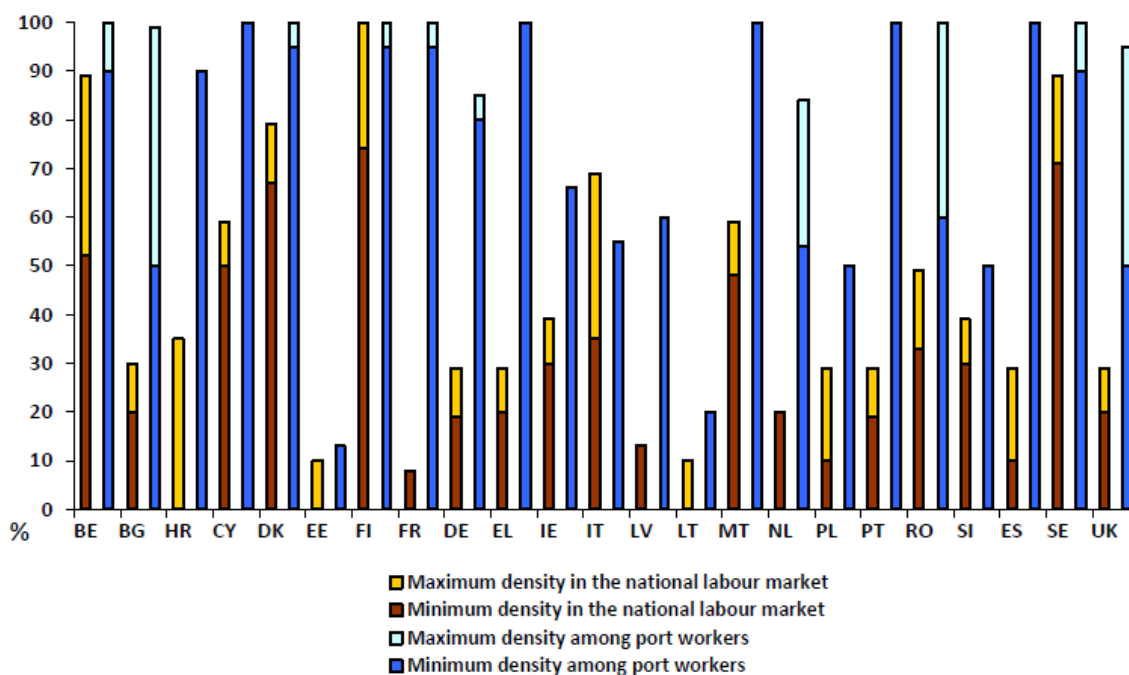
Member State	Number of employers	Number of port workers
Belgium	50-190	10,988
Bulgaria	54	4,000
Croatia	12	1,000-1,250
Cyprus	56	274
Denmark	100	2,000-5,600
Estonia	17	1,200
Finland	41	2,790
France	100	4,370

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Germany	150-300	15,000
Greece	30	2,500
Ireland	20	677
Italy	214-400	11,615-18,000
Latvia	58	1,500
Lithuania	16	2,159
Malta	8	1,100
Netherlands	85-150	7,275-11,000
Poland	423	5,990
Portugal	21	796
Romania	35	4,187
Slovenia	41	640-900
Spain	159	6,500
Sweden	71	2,900-3,900
United Kingdom	150-195	18,000
Total EU	1,911 - 2,497	107,571 - 122,681

The same study conducted by PORTIUS provide a rough estimates of trade union density among port workers as compared with the situation in the labour market as a whole. It goes without saying that these data, too, should be used very carefully, because official data on union membership are unavailable and in many cases indeed kept strictly confidential. As a result, none of the percentages provided below could have been verified by the consultant. Even so, one significant conclusion emerges from this table, namely that – despite local signs of declining membership – in (almost) all countries union density among port workers is still higher than the average and often reaches very high percentages (between 90 and 100 per cent).

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As far as qualification and training systems are concerned has been assessed the extent to which national training requirements are in place. In some countries all port workers must be specifically trained under either legal, contractual or factual requirements. Existing legal requirements do not seem in all of these States to have been fully implemented. In another countries equipment operators such as crane drivers must obtain a special training certificate (which is often governed by non-port specific regulations. Finally, there are States where no training requirements seem to apply (except health and safety training as required under general laws and regulations on occupational health and safety).

Concerning the level at which specific training for port workers is practically organized, in a majority of Member States training is organised by institutions at national level, while in others the centre of gravity is the port community or the individual employer. There are, for example, countries where training is organised *ad hoc* by a national ports authority as well as countries where a port training school located in a major port caters for the training needs of employers in different ports, and countries where a variety of training providers is operating without being linked

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to one specific port. Another situation are countries where the focus is on training arrangements for the local port community, but here too, a local training centre may offer its services to other ports. Another situation is when the bulk of responsibility is on individual employers but this does not prevent the provision of training for workers in more than one port either.

The assessment further distinguishes between those countries where training for port workers is organised in an educational institution, school or training centre (regardless of whether this entity deals with port training only or also with other programmes), and countries where no such entity seems to exist. There are, for example, countries where an educational institution offers bespoke training courses but where in practice training is mainly if not solely organised by individual employers. Also there are cases where it is only available in general schools but to what extent this education focuses on port labour cannot be determined. In several Member States (for example, in Denmark, Greece, Poland and the UK), global container terminal operators organise well-structured in-house training.

Concerning the port worker training management there appear three possibilities :

- (1) managed by the State, a public agency or a port authority,
- (2) jointly by employers' and workers' organisations, or
- (3) by employers or employers' organisations

There are some countries rely, for example, on both a jointly managed school and on private training providers. In other States, training is organised by port authorities as well as by labour pools.

Finally, has to be mentioned that there are EU Member States where national (either legally imposed or voluntary) national qualification and certification systems are in place for all port workers, and States where no such system has been developed (or only for specific jobs such as equipment operators). But there are countries where exist qualification and certification requirements for specific functions such as crane operators at general. The assessment do not indicate whether the existing system allows or promotes multi-skilling.

Belgian law imposes attendance on training courses before workers can be registered (Bulgaria has similar legal provisions but their implementation is unclear). Ports in

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Denmark, France, Germany and the United Kingdom rely on a non-legally binding yet sophisticated national vocational qualifications and/or certification system. In a number of ports, the right to training is enshrined in collective agreements.

As regards the legal arrangements on occupational health and safety in port labour, we can again distinguish between those Member States which have enacted port labour-specific laws and regulations, and those which solely rely on general occupational health and safety laws. The majority of EU Member States still have specific laws and regulations on occupational health and safety in port work.

The assessment revealed lack of availability of specific statistics on the frequency, incidence and severity of occupational accidents at cargo handling companies and/or involving port workers. Even in the absence of complete and comparable data, it seems safe to conclude that port labour is one of the most dangerous occupations in the European Union. Detailed statistics for countries such as Belgium, Cyprus, France, Germany and Italy justify the presumption that, even if the safety record has considerably improved over the past decades, the frequency and severity of accidents involving port workers remain among the highest in the economy.

Restrictions on employment and restrictive working practices

The study developed by PORTIUS reveal that roughly speaking, more than half of the Member States continue to apply a restrictive port labour regime.

More concretely, in a considerable number of EU Member States and ports, one or more of the following restrictions on employment prevail:

- compulsory membership of labour pool for service providers;
- exclusive right of labour pool to supply (all or some) workers;
- mandatory registration of port workers;
- compulsory membership of trade union (closed shop);
- compulsory appointment or nomination of pool members, employees or registered workers by trade union (closed shop);
- preferential shop (priority of engagement for unionised workers);
- privileges for relatives of workers (nepotism);
- specific training and/or qualification requirements;
- special or discriminatory minimum age requirements;

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- language skills requirements;
- lack of transparency in definition of (territorial or functional) scope of exclusive rights or other restrictions;
- extension of territorial scope to dry areas beyond ship/shore interface;
- extension of the scope of restrictive rules to logistics work;
- lack of transparency in granting of membership, employment, nomination or registration of workers;
- limitation of the number of pool or registered workers;
- impossibility of scaling down the pool or to deregister workers;
- prohibitions or restrictions on subcontracting between port operators;
- prohibitions or restrictions on the supply of workers by temporary work agencies;
- overmanning resulting from mandatory manning scales;
- decision on manning levels taken by public authority and/or unions;
- strict demarcations between jobs (exclusive or preferential rights of subgroups; ban on multi-skilling);
- compulsory classification of workers in one shift only;
- prohibition or restrictions on self-handling;
- prohibition or restrictions on permanent employment contracts (including minimum or maximum percentage of permanent employment);
- restrictions on access to handling services market (exclusive rights or limitation of number of authorised operators, either legal or factual);
- compulsory financial contributions to, or shareholder status in, the pool agency;
- exclusive right of pool to provide training (prohibition or restrictions on market access for other training providers);
- inefficiency of sanctioning system ('job for life', often caused by conflict of interest of trade unions sitting on board of sanctioning committee or similar);
- ancillary restrictions on conditions of permanent employment at individual operators (for example, in relation to job promotion).

Furthermore, in a number of Member States and ports instances of restrictive working practices were found. These include, for example:

- limited working days and hours;
- non-respect of official working hours;
- restrictions on the use of new cargo handling technologies.

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As a rule, the identified restrictions substantially increase costs, affect productivity and efficiency, act as a barrier to the creation of jobs and/or impact negatively on the competitive position of the port. In several Member States, we found cases where traffic flows shifted to other ports as a result of restrictive port labour arrangements. But we also detected examples where employers were not overly concerned about the additional costs as they controlled a captive market or enjoyed an individual or either collective monopoly and could charge almost any sum to shipowners or locally established industries. In addition, it does happen that major international customers such as global shipping lines or industrial conglomerates prefer to abide by local idiosyncrasies (and high tariffs) rather than disrupt their global sailing schedules or supply chains. In other ports where fewer restrictive practices survive, these are not always seen as major competitive issues. Several ports declared themselves restriction-free.

In a number of Member States and ports, employers complain about closed shop issues and, generally, an extremely strong bargaining position and high militancy of trade unions. Practically speaking, trade unions often control access to the labour market for newcomers, or have a veto right with which they can prevent the imposition of sanctions upon registered workers in the case of misconduct. The casual nature of employment and the ineffectiveness of the sanctioning system prevent employers from exercising normal authority over pool workers. Many employers feel powerless against the constant threat that their operations will be disrupted through work stoppages, while their clients insist that their ships must never be blocked as a result of industrial action. In a number of ports, the closed port labour pool is seen as a power base for the unions. This confirms the validity for the EU of S. Harding's finding that the privileged position of trade unions in ports may result finally in a negative attitude towards the port workers on the part of the general public and on the part of the other unions. In some Member States, perceived privileged employment conditions in ports, exorbitant union demands and the frequency of strikes have aroused popular anger.

Language requirements may be justified as a restriction of the free movement of persons when they relate to the linguistic knowledge necessary for the exercise of a given profession in the Member State. A general rule imposing knowledge of the local language may seem disproportionate because what really matters is efficient and safe communication between members of a given team (or gang) of workers,

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between the competent representative of the workers and the ship's crew and, in those cases where they actually cooperate, between crew members and port workers themselves. To achieve this end, it is not in all circumstances necessary to use the local language of the port. More in particular, it would appear reasonable to assume that today shipboard and shoreside workers in non-English speaking countries and port localities will, in certain circumstances, be able to communicate sufficiently safely in English.

Self-handling, which was a particularly contentious issue during the debates over the proposals for an EU Port Services Directive, should certainly not be considered the major issue at EU level. There is no signs whatsoever that ship operators are demanding a general right to handle their ships in EU ports using their own crew. However, in certain cases, mandatory use of port workers causes serious problems and considerable anti-competitive distortions, for example (1) where port workers must be hired and paid to handle special purpose vessels (heavy lift ships) while the work must and actually is performed by the crew; (2) where self-unloading ships and barges call at a port; (3) where certain ship owners are allowed to lash and unlash rolling stock on board short sea ro-ro vessels while competitors are forced to use port workers; or (4) where ship owners wish to operate 24/7 even if port workers are unavailable at certain times.

In several Member States, employers commonly rely on workers supplied by general temporary work agencies (interim workers), while in other Member States or ports, the exclusive or preferential rights of pools or registered port workers entail a ban on the use of temporary agency workers, to which an exception is sometimes granted in the case of a shortage of pool or registered workers or for specific jobs (for example in logistics). In other countries and ports, there are diverging comments on the need to open up the port labour market to temporary work agencies. Some employers stated that general temporary agency workers are unsuited for specialised jobs (for example, the operation of gantry cranes or tugmasters), that there is a serious risk that they will cause damage to equipment and cargo, and that port labour pools still offer the advantage of guaranteeing a steady availability of skilled workers. Other stakeholders insist that market access for temporary work agencies would increase flexibility, that the only prerequisite should be adequate skills, and that free competition can help remove restrictive rules and practices. The free market access

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for temporary work agencies is already regulated at EU level today and certain situations in ports may not pass the test.

Restrictions, in particular overmanning, may also impact negatively on the development of shortsea and inland shipping in maritime ports. In several Member States, port labour arrangements are a disincentive to the development of barge traffic, which is then diverted to distant river and canal berths outside port areas. It regularly occurs that substantial volumes of waterborne traffic are shifted to road for the sole reason that disproportionately large gangs of unnecessary port workers have to be hired.

In certain ports, mandatory use of registered port workers to work at dry terminals operated by logistics companies is considered a major issue. There are instances of logistics companies which relocated to other ports or to places beyond port boundaries, causing an increase in freight transportation by road.

Last but not least, in Member States and ports where port labour is governed by specific laws, regulations and/or collective agreements, the competitiveness of ports is hampered by legal uncertainty, a lack of transparency or even the absence of the rule of law.

While some legal debate seems inevitable wherever a demarcation line has to be drawn between the respective scopes of specific port labour rules and general labour rules, at places legal uncertainty can become excessive, leading to numerous, lengthy and costly legal disputes, arbitrary if not discriminatory joint decisions or agreements by social partners in individual cases, and fundamental uncertainty for prospective investors.

Furthermore, in certain Member States and ports, the port labour system seems to lack elementary transparency. Examples include:

- the wide application of unwritten customs and usages which may take priority over official rules, be implemented in an arbitrary manner, and have serious restrictive effects;
- lack of clear and objective criteria and procedures for the granting of registration as a port worker;

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- non-publication of collective agreements and similar instruments setting out restrictions on employment or supporting restrictive working practices which may impact on the position of third parties, especially potential competitors as well as prospective port users and investors.

The lack of an official publication of all applicable employment conditions prevents port users from assessing whether they are being treated correctly and without discrimination. There is no reason why the requirement to publicise all port regulations and tariffs, which has been a fundamental principle since the adoption of the International Statute of Maritime Ports of 1923⁷⁰⁰, should not be transposed to the port labour market. In addition, transparency is a general requirement of EU law.

Finally, the survey revealed cases where applicable laws and regulations are blatantly ignored and where trade unions, through industrial action, impose illegal practices at individual companies. In several ports, authorisation schemes for self-handling introduced in line with EU policy trends remain a dead letter. In extreme situations, companies are forced to hire and pay registered port workers even if applicable laws and regulations do not oblige them to do so.

Notwithstanding the above, there are also ports which rely on a highly regulated pool system yet succeed in operating very efficiently. Apparently, the wide acceptance of these monopolies rests on the absence of any ancillary restrictions or restrictive working practices, and on a constructive cooperation between employers and unions (Germany). It should also be highlighted that an increasing number of Member States and ports have successfully eradicated most if not all restrictions and opened their markets for the provision of port services and of workforce to new entrants (Ireland, United Kingdom). As a rule, such measures have improved the competitiveness of ports and generated growth. Recently, several national governments announced a further modernisation of their port labour system. On the other hand, reform often seems a step-by-step process. Some hard-won improvements only had or have a partial or limited effect on restrictions.

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Qualification and training issues

The type and intensity of training arrangements for port workers is extremely varied across the EU. Common national training programmes and curricula are rare. Not every Member State considers port labour a regulated profession access to which should be subject to the possession of specific professional qualifications. In some Member States, training for port workers is regulated by law and/or collective agreement, while in others it is entirely left to the discretion of the individual employer. In rare instances (Germany), the training scheme for port workers is geared to the European Qualifications Framework. In a substantial number of countries (France, UK, shortly the Netherlands), the authorities or the sector elaborated a national qualification and certification framework. Some national laws and regulations expressly confirm the principle of mutual recognition of competences acquired by port workers in other Member States. All these differences in training arrangements seem to contribute to a low frequency of job mobility among port workers, even between ports within the same Member State.

A number of ports, pools, companies and training institutions offer extensive training courses for port workers belonging to different job categories. A few renowned training providers offer their services to port employers based outside the EU. Many companies consider proper training of workers essential in order to prevent damage to expensive specialised port equipment and cargoes. Collective agreements may also impose duties on employers to provide training. A few cases were reported where social partners or workers' pools maintain an exclusive right to provide training at their own vocational school, denying access to competing providers.

In some cases, training is attended on a voluntary basis, while other programmes are compulsory. The latter also include certification for drivers of port equipment. But even here, no uniformity exists.

In some ports and companies, workers are encouraged to acquire certifications for different jobs (for example, Germany, the Netherlands, Portugal, Spain), but in other places multi-skilling remains impossible as a result of strict job demarcation rules.

Some individual employers find it unattractive to invest in training of casual workers. In one Member State, employers and unions introduced a new national training

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scheme in an overt attempt at preventing self-handling by ship's crews. Locally, issues have arisen in relation to insufficient training provided by temporary work agencies active in ports.

Finally, the qualifications and certification issue cannot be detached from the debate on the need to maintain registration systems which ensure priority of employment for registered (pool) workers.

In 1999, Harry Barton and Peter Turnbull questioned why the European Commission still regarded labour regulation in ports as simply a „rigidity“, citing in particular the registration of port workers and the existence of labour pools. They argued that such provisions are still extensive in the EU, even among the most efficient ports in Europe, which suggested, that employers derive significant benefits from such arrangements. For these authors, registration of port workers is in fact part of a process of „certification“ or „professional status“ granted when the docker has demonstrated a particular level of technical competency. As a result, registration schemes not only control aggregate labour supply, and if they operate effectively prevent any persistent shortages or surpluses of labour, but also ensure a supply of suitably qualified workers. If these workers can be hired as and when required from a regulated labour pool, jointly financed by the employers (with possible contributions from users and/or the state), then the employer can secure significant cost savings. Equally important, regulation provides an element of employment security for dockworkers, typically via provisions for guaranteed income and/or hours of work, which is crucial to employee welfare, human dignity and organisational commitment.

However, not everybody seems to agree with this analysis. In his 1979 treatise on port management, Jean-Georges Baudelaire first of all pointed out that, traditionally, rules on registration of port workers rarely imposed any objective conditions on access to the profession, in some cases even not medical fitness. The thesis that ILO Convention No. 137 requires that private port operators only employ "qualified or recognized dockworkers" is not entirely convincing either, as the main purport of this instrument was to ensure stability of employment for either permanent or registered casual port workers (even if, additionally, it requires that vocational training be organised). Paradoxically, under some highly regulated pool systems workers are both registered and well trained but cannot acquire certificates attesting their professional competencies.

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At an ILO meeting in 2002, the French Government representative said that the emphasis should shift from the notion of registration to objective professional qualification criteria recognised by an international standard. This is all the more important since cargo handling has become a task requiring greater qualifications in view of the development of handling techniques, based on increasingly expensive machinery. This evolution implies additional training needs. At the same meeting, employers argued that in the 21st century, port labour requires constant learning, adaptation and the acquisition of new skills to keep pace with emerging technologies, new methods of operation and new forms of workplace organisation that place more responsibility on individuals at all levels of an organisation.

It seems that today many workers' organisations are welcoming the introduction of objective qualification and certification arrangements. In several Member States, the social partners indeed found common ground on these matters. Today, thousands of European port workers already possess modern professional certificates. The debate on whether these qualification and training systems should be open to every candidate for a job in the port, whether access to the profession should be legally reserved for certificate holders and whether this needs EU regulation remains open.

Health and safety issues

Generally, it seems that sufficient legal instruments to guarantee health and safety of port workers are available in the Member States of the EU. However, there is a clear contrast between the regulatory approaches of individual States. Some States and ports continue to rely on specific and prescriptive – in some cases hopelessly outdated – safety regulations for port labour, while others resort to the introduction of soft law standards (Guidelines or similar). Yet other Member States have abolished every port-specific safety regulation and only apply general rules on occupational health and safety. In many countries, health and safety is further regulated by collective agreements or other jointly adopted instruments. No fewer than 6 EU Member States remain bound by the fundamentally outdated ILO Convention No. 32.

In the context of maritime policy and especially with a view to enhancing safety of ships and their crews, several IMO and EU instruments recommend if not impose the organisation of safety training for port workers engaged in the handling of dangerous goods, stowage and securing, and the loading and unloading of solid bulk vessels.

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But no such training requirements have been adopted for port labour as such, or with a view to the health and safety of the port worker.

Port labour (or cargo handling in ports) is not identified as a separate economic activity or occupation under available international and European standard classification systems. As a result, no EU-wide statistics on occupational health and safety in port labour can be provided. The European Statistics on Accidents at Work (ESAW) do not yield relevant data either. National codes are highly diverse and not every Member State has identified port labour or cargo and passenger handling in ports, or the profession of port worker, as a separate item for statistical purposes. In the absence of detailed and uniform data for all Member States, it is currently impossible to provide a clear insight into the safety level of port labour in the EU as a whole or to formulate any substantiated conclusion.

In several Member States, workers' organisations consider the lack of detailed statistical data on accidents among port workers a major issue, especially where official authorities deny that port labour is today a particularly dangerous or strenuous profession which needs specific health and safety regulation. In the absence of precise and reliable statistics and in the light of anecdotal evidence on the frequency of accidents and illnesses, unions say that such an approach is unjustified (United Kingdom).

Of course, a high standard of health and safety cannot be ensured by laws and regulations alone. To an extent, safety risks are increased by insufficient risk prevention management by employers, lacking safety awareness on the part of the workers and overmanning. In some Member States, the Labour Inspectorate is said to neglect the port sector due to staffing problems or wrong priorities. Under Directive 89/391/EC on safety and health of workers, Member States have a duty to ensure adequate controls and supervision. In addition, ILO Recommendation No. 145 requires that adequate labour inspection services be organised in ports. Meanwhile, several observers insist that there is nothing exceptionally dangerous about port labour, the only specificity being that many occupational hazards come together in port work.

Trade unions tend to legitimise exclusive rights of labour pools and registered workers and other restrictions by referring to special safety risks. However, it appears

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that the national and local legal arrangements which underpin these employment systems are in some cases not based on safety objectives at all, or that they only deal with safety as a subordinate element. Many employers are skeptical about the continuous reference to safety arguments by workers and their unions. Allegedly, these arguments are defeated by the right of employers to use totally untrained occasional workers in the event that no registered workers are available and by the non-application of safety standards to other types of workers who are also allowed to work in ports. Here, not only a discrimination issue may arise, but also a possible infringement of Directive 89/391/EC on safety and health of workers which obliges every employer to ensure adequate training in health and safety matters. Rhetoric also played a key part in one Danish case where port workers claimed an exclusive right to perform lashing on board ro-ro vessels even if not one worker had ever carried out such work before while the shipowner regularly used its crew for lashing work in other ports of the country

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3. The survey of port regulation in different EU countries

The survey has been made in Romania, Republic of Moldova, Ukraina (countries involved in the project) but also in other countries from Danube macroregion

Romania

Romania has ports located on the Black Sea shore and along the Danube River.

The largest port in Romania is the port of Constanța, with Mangalia and Midia as smaller satellite ports. The public infrastructure of these ports is managed by National Company Maritime Ports Administration (MPA) S.A. Constanța

Along the maritime sector of the Danube the main ports are Galati, Braila and Tulcea. The public infrastructure of these ports is managed by the National Company Maritime Danube Ports Administration S.A. Galati

The main inland ports are : Cernavoda, Giurgiu, Calarasi, Calafat, Turnu Severin and Orsova. The public infrastructure of these ports is managed by the Administration of the Ports on the Fluvial Danube S.A. Giurgiu.

Romanian ports are owned by the State and managed by state-owned companies.

Cargo related services are carried out by private companies in a competitive environment, applying free market principles along the lines of a landlord model.

Ordinance No. 22/1999 on the Administration of Ports and Waterways, the Use of Water Transport Infrastructure of the Public Domain and the Development of Shipping Activities in Ports and Inland Waterways (hereinafter: 'Ports and Waterways Ordinance') regulates the management of Romanian ports and contains a separate chapter on port labour (Chapter X). The Ports and Waterways Ordinance expressly provides that port labour is regulated by the Ordinance, by labour legislation and by international agreements and conventions to which Romania is a Party (Art. 59). The Ports and Waterways Ordinance was implemented by, *inter alia*, Order No. 287 of 27 February 2003 on the Authorisation of Economic Operators Performing Shipping Activities (hereinafter: 'Order on Authorisation of Port

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Operators') and the Procedural Rules on the Issuance of Port Worker's Books and the Registration of Port Workers of 5 April 2011 (hereinafter: 'Procedural Rules on Port Labour'). At present the 'Order on Authorisation of Port Operators' has been repealed and no other regulation has been issued

Port authorities are also involved in the management of free zones where goods can be handled and stored under a customs and profit tax exemption established by specific laws and regulations. Reportedly, the laws and regulations on labour in ports equally apply in the free zones located inside port areas.

Health and safety in port labour is governed by Act No. 319/2006 on Safety and Health at Work which was implemented by Government Decree No. 1425 of 2006.

Another relevant instrument is Government Decision No. 1051 of 9 August 2006 "on the minimum safety and health requirements for the manual handling of loads that present a risk to workers, particularly of back injury". Directive 2001/96/EC of 4 December 2001 establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers was transposed in 2003.

Romania ratified ILO Convention No. 137, but it is not bound by ILO Conventions Nos. 32 or 152.

Currently, there is no port-specific national collective labour agreement in Romania. Reportedly, provisions on port labour were included in a national collective labour agreement for the transport sector for the period 2008-2010, which has now expired. For the employers' side, the agreement was concluded by the national employers' association CNPR which consulted sectoral associations such as AAOPFR and UPIR. Company collective agreements are concluded at every port operator.

Port labour in Romania was first regulated by the Act on the Organisation of Port Labour of 1931 which reserved port labour to workers permanently registered with the Harbour Master's Office. The workers were employed on the basis of a rotation system. The Act also set up a Port Labour Committee made up of the regional Labour Inspector, two representatives of port employers and two representatives of the workers, joined by the Harbour Master, who only had a consultative vote.

The current pattern of port management and port labour was elaborated over the past two decades. The main instrument adopted after the fall of communism in 1989 is the

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Ports and Waterways Ordinance of 1999, which continues to apply today, albeit in a revised version. Even if Romania ratified ILO Convention No. 137 in 1975, it did not enact any legislation for its implementation until the adoption of the first version of the Ports and Waterways Ordinance.

Between 2004 and 2010, serious issues arose over the functioning and the existence of the port labour pool in Constanța, the eradication of illegal work in the port and, subsequently, a reform of port labour legislation.

First of all, in implementation of the Ports and Waterways Ordinance of 1999, as amended in 2003 – and, for that matter, of ILO Convention No. 137 – the Port Labour Agency of Constanța was established in August 2004. The founding partners were the trade union FNŞP, 6 port operators and the Port Administration. It ensured payment of a minimum wage to some 60 to 70 workers who presented themselves for work on a daily basis or participated in multi-skilling courses. However, almost simultaneously, but without any specific legal basis, the private work agency Armoni Prest was established. Since the law did not regulate the legal nature of unemployment payments to workers (it was neither social aid, nor unemployment benefit), both entities were abolished after only six months. Both the employers' organisation and the trade union regretted this development, as some employers took in workers without legal contracts of employment, against wages three to four times lower. This type of illegal activity, including excessive overtime, was said to cause serious health and safety risks. In 2005 and 2006 inspections revealed that over 80 per cent of workers entering the port did not have permits or labour licences and possessed no or insufficient know-how. Another worrying phenomenon was that port operators dismissed hundreds of workers, only to replace them with illegal or temporary workers. In addition, trade union FNŞP pointed out that undeclared work in the port caused distortions of competition between port operators.

In the first half of 2006 the trade unions urged the Government to combat illegal or undeclared work in the port. Trade union FNŞP demanded the re-establishment of the Port Labour Agency which would after all only "the European model which exists in all the world's largest ports". Employers denied the accusations that they relied on large numbers of illegal workers and feared that FNŞP, through the establishment of the Agency in which it would be the sole representative of the workers, tried to monopolise the provision of workforce in the port and to turn it into a profit-seeking venture for their own benefit. After an initial strike by harbour workers in the spring of 2006 in protest against illegal work, an agreement was signed between the trade

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unions, employers and other organisations involved in harbour work to eradicate the illegal work forms at the Port of Constanța. The agreement was signed by trade union FNŞP, the National Trade Union Bloc (Blocul Național Sindical or BNS, to which FNŞP is affiliated), the Constanța County Labour Inspectorate (Inspectoratul Județean de Muncă Constanța, IJMC), the Romanian Naval Authority (Autoritatea Navală Română, ANR), the National Company Maritime Ports Administrations Constanța, the police and OPOP. This agreement also included changes to the re-published Ports and Waterways Ordinance.

On 5 September 2007, the Government adopted Emergency Ordinance No. 86, which modified the Ports and Waterways Ordinance. However, by mid August 2007, the proposed changes had not been approved by the Ministry of Transport's Social Dialogue Commission. The Government therefore disregarded the Commission's veto, and issued the Ordinance without considering the suggestions made by the trade unions and the employers' organisations. FNŞP stated that they had asked for all port workers to be registered, a personal labour register to be issued and evidence to be kept of these registers. According to FNŞP, "the Ministry showed that they didn't want this to happen, because there were big interests at stake, and these regulations would have made things more complicated". Backed by BNS, the trade union representatives asked Romania's Prime Minister to intervene in this "case which broke the principles of the social dialogue". They also threatened to inform the International Labour Organization, the European Commission and the International Transport Workers' Federation of the situation. The trade union leaders believed that about half of the 11,000 workers at the Constanța port worked illegally or partly illegally and that they worked on a daily basis, illegally supplied by tens of operators or temporary work agencies, without a port worker's book and indeed even without an employment contract, and that no social security contributions were paid.

Moreover, these labour conditions were said to be in breach of :

- (1) ILO Recommendation No. 145 which provides that port workers should be registered in order to "prevent the use of supplementary labour when the work available is insufficient to provide an adequate livelihood to dockworkers" (Art. 11(a));
- (2) conditions on the licensing of port operators, especially those that relate to employment of port workers, as laid down in the Ordinance on the authorisation of port operators, in force at that time;

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(3) the general restrictions on the use of temporary labour laid down in the Romanian Labour Code.

The unions also complained that these practices only could continue to flourish because competent authorities did not bother to seriously inspect ports and port operations. To support their demands, the trade unions organised a protest meeting on 9 October 2007 outside the Ministry’s offices. More than 500 workers from the ports of Constanța and Brăila participated in this meeting.

On 15 October 2007, the unions organised another strike which paralysed activities for twelve hours in the ports of Constanța, Brăila and Tulcea. About 2,000 workers took part in the strike action.

An important element leading to the start of the conflict has been the cancellation of Article 63 of the Ports and Waterways Ordinance, which stated that the organisation of labour in ports was the responsibility of both the Agency in charge of the employment and training of port workers and of some professional organisations of workers. By cancelling Article 63, the Port Labour Agencies, controlled by the trade unions, were suppressed. As concern mounted due to the abrogation of Article 63, results that port employees can establish any association they wish in order to control port activities, as long as it is in accordance with the existing legislation regarding associations and foundations. According to this, the trade unions do not need a special legal provision in this respect. During the prolonged debates on the Draft Act for the Legislative Approval of Emergency Ordinance No. 86/2007, the Committee for Labour and Social Protection of the Chamber of Deputies, for example, proposed an alternative wording to the effect that the establishment Port Labour Agencies be an option, not an obligation, on the social partners, and that the employment of unregistered port workers be deleted from the catalogue of criminal acts, because the responsibility to recruit workers should rest with the employers. Also in 2009, an ILO project on social dialogue in Romanian ports concluded that a specific legal framework for port labour remained a necessity in order, *inter alia*, to ensure safety of work and prevent illegal employment. On 3 June 2010, the Romanian legislator approved the Emergency Ordinance No. 86/2007 but also adopted final amendments to the Ports and Waterways Ordinance.

The Ports and Waterways Ordinance identifies cargo handling services including loading and unloading from ships, stowage, storage, lashing, sorting, labeling,

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palletising, packing, stuffing and stripping of containers and other cargo related activities as shipping activities. These activities may only be performed by economic operators.

The Ports and Waterways Ordinance expressly authorises Port Authorities to grant rights of use on port land to port operators. Publicly owned port authorities are not allowed to perform cargo handling activities according to the Ports and Waterways Ordinance. Cargo may only be loaded and discharged, and passengers may only embark and disembark, at ports enlisted by the Minister of Transport and Infrastructure. This exclusivity does not apply, however, to (1) loading and unloading at industrial berths where manufacturers process their own goods; (2) in the event it is economically impossible to use a public port, one-off loading and unloading of goods at isolated places; (3) loading and unloading of goods at industrial berths whenever public ports do not possess adequate facilities. Any derogation as mentioned under (1) or (2) must be approved by the Ministry; as regards the exception under (3), each individual operation must be authorized.

The Ports and Waterways Ordinance provides that 'specific port labour' is performed by port workers. The concept of 'specific port labour' is defined as the loading and unloading of goods and/or containers in and from ships, the handling of goods to and from warehouses and other means of transportation, storage, stowage, lashing, sorting, palletising, packing, stuffing and stripping of containers, slinging, bagging of goods, as well as the cleaning of warehouses and ship's holds, either done manually or with mechanical means. A port worker can be any person who has reached the age of 18 and meets the criteria for health and professional training set by the law (Art. 61(1) of the Ports and Waterways Ordinance). The qualification system is also governed by applicable laws. Reportedly, no specific laws or regulations are currently in force.

Port workers may only carry out their profession in a port if they are registered and possess a work book. The Port Authorities are charged with maintaining a list of workers performing port labour on the basis of an individual employment contract. The Port Authority registers the worker on the basis of a written request from the Port Labour Agency or from an employer (economic operator in the port) – with whom the worker has concluded a contract of employment which was duly registered with the local Labour Inspectorate.

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Work books are issued and workers are registered in accordance with procedural rules approved by the Minister of Transport and Infrastructure. The register must mention specialisations of port workers, if any. Every year, the port worker's book must be stamped by the Port Authority.

The Port Authority shall determine a tariff of fees for the issuance of work books. The work book is valid only in the port where the worker has concluded a contract with the individual economic operator who applied for registration or where the worker is validly registered by the Port Labour Agency. If the individual employment contract is terminated or the worker withdraws from the Port Labour Agency, the economic operator or the Agency is obliged to notify the Port Authority in writing and to hand in the work book. Work books that have been handed in are kept by the Port Authority. If the worker concludes an individual employment contract with another operator who provides services in the same port, the Port Authority shall re-issue the work book on request. Port operators shall register with the Port Authority all workers with whom they have concluded an individual contract of employment. Port operators may only use port workers with whom they have concluded an employment contract for either a definite or an indefinite term provided it is registered with the Port Authority and the worker possesses a work book. The register of port workers is considered a register within the meaning of ILO Convention No. 137.

In order to ensure the availability of the necessary reserve workforce and to optimise its use with regard to the fluctuations of port traffic, Agencies for Employment and Training of Port Workers, hereinafter 'Port Labour Agency') are to be established in the ports of Constanța, Midia and Mangalia. The Port Labour Agency is a professional association set up and managed in accordance with the general Associations and Foundations Act. The Agencies shall consist of representatives of economic operators and/or their organisations and of the trade union federation with the highest number of members in the ports of Constanta, Midia and Mangalia. The main tasks of the Port Labour Agency are:

- (1) the preparation of a development programme for the port labour reserve, in accordance with the dynamics of port activities;
- (2) to keep available reserve port workers under an individual contract of employment with the Agency;

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- (3) to manage the reserve pool, with a view to balancing supply and demand at the port concerned;
- (4) to maintain work books for reserve workers;
- (5) to ensure the supply of reserve port workers at the request of the economic operators;
- (6) to carry out activities in relation to qualifications, training, multi-skilling and professional reconversion at the request of workers or employers, based on a contract;
- (7) to cooperate with the Port Authority, local public authorities or any other authorities to address specific problems in relation to the reserve labour pool, and to solve deficiencies noted in relation to the use of the reserve port labour pool;
- (8) to take initiatives to ensure a minimum income for reserve port workers when they are unable to perform work beyond their will;
- (9) to see to it that economic operators do not use port workers otherwise than in accordance with the Ordinance.

Reserve port workers are supplied on the basis of a contract concluded by the economic operator and the Port Labour Agency.

The Regulations on the organisation and the functioning of the Port Labour Agency must be approved by the Minister of Labour, Family and Social Protection.

The Port Labour Agency is financed through, *inter alia*, monthly contributions by the pool workers and the economic operators. The former are determined annually by the General Assembly; the latter are based on the volume of cargo handled (expressed in tonnes or TEU). Other income sources include contributions for training by the National Employment Agency. At present no activities are operational.

There are no hiring halls in Romanian ports.

In addition, it should be mentioned that workers may be registered for occupations mentioned in the legal classification of professions in Romania. In practice, the legal port jobs. The problems raised from this bottleneck have been deeply analysed by WP2.

There are some associative forms (NGO's) of :

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- Port operators and port administrations from Danube ports : the Union of Romanian Inland Ports (UPIR), which is affiliated to the European Federation of Inland Ports (EFIP).
- Waterway transport operators : the Romanian Association of Inland Shipowners and Port Operators (AAOPFR) which is affiliated at national level to the National Confederation of Romanian Employers (Confederația Națională a Patronatului Român, CNPR), and at international level to the European Barge Union (EBU)
- The existing trade unions has been presented in WP1

Qualifications and training : as has been mentioned, the Ports and Waterways Ordinance provides that all port workers must be trained, but the required qualifications have so far not been defined. The Procedural Rules on Port Labour reiterate that port workers must have the necessary qualifications, if applicable. The Ports and Waterways Ordinance mentions the provision of training to port workers among the essential responsibilities of the Port Labour Agencies for Constanța, Midia and Mangalia. Reportedly, the provisions above do not prevent other entities from providing training. The issue has been deeply presented under WP1.

The Ports and Waterways Ordinance aims to ensure that in Romanian ports only skilled workers are employed. Any participation in training courses is noted down in the port worker's book of the Procedural Rules on Port Labour). The registration of the attendance of training course in worker's books is not generally applied.

Health and safety : The Ports and Waterways Ordinance stated that the Safety and Health at Work Act applies in all sectors, both public and private; it sets out general duties on employers in relation to, *inter alia*, the protection of workers, the prevention of risks, information and training of workers and the organisation of work.

The Regulations annexed to Government Decree No. 1425 of 2006 provide, that, in order to ensure health and safety conditions at work and preventing accidents and occupational diseases, employers are required to obtain authorisation for operation in terms of safety and health issues before starting any activity. It also elaborates on health and safety training for workers.

Government Decision No. 1051 of 9 August 2006 "on the minimum safety and health requirements for the manual handling of loads that present a risk to workers,

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particularly of back injury" is also relevant to ports. However, neither of those laws and regulations contains rules that are specific to port labour.

The Romanian Labour Inspectorate has published a number of Guidelines on best practices, but these do not include any port-specific instrument either.

The Procedural Rules on Port Labour provide that, with a view to safety of work, port operators are obliged to use workers possessing the necessary qualifications for the job concerned, if applicable.

Republic of Moldova

The maritime Danube sector of Republic of Moldova has a length of 430 m. The inland waterways was Nistru and Prut rivers with small inland ports Rîbnița, Bender; Varnița and Ungheni. In 1980 the total inland traffic was about 5 mil.tonnes. After the CIS dissolution and starting with the transnistrean conflict all inland transport decreased. Ports stopped working and transport meanings has been sold or destroyed. The main ports (Bender and Râbnița) on the Nistru river passed under the transnistrean jurisdiction. At present both, Nistru and Prut rivers, are navigable only along limited sectors due to the lack of maintenance works

At present only a few small operators are providing waterway transport services on the Prut river.

The following public bodies, subordinated to the Moldavian Ministry of Transport, are in charge with port basic infrastructure management and naval traffic coordination and monitoring : the public institution the Giurgiulesti Port Harbour Master, the State Enterprise „Inland Port of Ungheni” with a branch in Giurgiulesti (the Passenger Port), the State Enterprise „Moldavian Naval Register”, and the State Enterprise „Molovata Ferryboat” .

Port services are provided by the private operator the „International Free Port Giurgiulesti” which own and manage the only Danube port of the Republic of Moldova which has been constructed based on a 99 years concession contract granted to ÎCS ”Danube Logistics” SRL by the Moldavian State.

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The legislative framework is the Commercial Maritime Navigation Code (further mentioned as Code) which has been translated from the former Russian Federation legislation.

The Code has been adopted in 1999 by the Law no.599 and modified several times

The port administration and functioning are regulated by Section IV- the maritime port

Chapter 1 provides the legal statute and port functions. The legal status of a maritime port is established according to the present Code and set up according to the law applicable to the establishment of the legal person. The functions are established by the legal persons' Statute.

If the port is open to free access of international maritime traffic should be made public from the beginning

The basic port infrastructure is public property and includes the land, waterside constructions and the water surfaces

The port basic infrastructure is managed by the Port organized as legal person on the basis of a concession or a rent contract. The port is a State Enterprise.

The port services are provided by port operators (private company) but can be provided as well by the port administration. In case the port services are provided by a private company the Port will rent/concess the land to this company

The port administration are in charge with :

- maintaining navigability in ports area
- berthing the vessels
- signaling inside port area
- regulating the port infrastructure use and public services
- regulating the health and safety rules inside port area
- collection of waste and residues generated by vessels

The Port Director is appointed by the National authority in charge with port management – the Ministry of Transport

The employment and safety and security of work in ports are regulated by general law

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There are no specific requirements regarding port labour force employment
The statute of “port worker” does not exist and as consequence no conditions has to be fulfilled

No associative form of employers exist or trade unions of port workers

Ukraine

Reni and Izmail are the Ukrainian ports along the maritime sector of the Danube

Since last year all ukrainean ports has been administrated and operated by a national company with head office in Kiev. The recent reorganization separated the port administration and port operations. At present all ukrainean ports including main maritime ports located on Black Sea are functioning as landlord ports and are managed by a single national company with head office in Kiev and branches in all major ports. The port operations are provided by state owned companies which can be privatized

The regulatory framework concerning waterway transport and ports are :

- Merchant Shipping Code of Ukraine.
- Law of Ukraine “About Ukraine Sea Ports” from 17.05.2012 No.4709-VI;
- International Code regarding Security of Ships and Port Facilities (ISPS Code)
- Regulations for protection of internal sea waters and territorial sea of Ukraine from pollution and contamination, approved by the Cabinet of Ministers of Ukraine from 29.02.1996 No. 269;
- Order of the Ministry of Infrastructure of Ukraine from 27.05.2013 No. 316 “About port fees”;
- The rules of providing services in seaports of Ukraine approved by the Order of the Ministry of Infrastructure of Ukraine from 05.06.2013 No. 348;
- Regulations for the control of ships in order to ensure safety of navigation, approved by the order of the Ministry of Transport of Ukraine from 17.07.2003 No. 545,
- The procedure for registration of arriving of the ships in seaport and providing the exit permits for the departing to sea, processing the exit from the seaport, approved by the Ministry of Infrastructure of Ukraine from 27.06.2013 No. 430;

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- The order of providing the services in ensuring the prevention and elimination of spills of pollutants in the seaports of Ukraine approved by the Order of the Ministry of Infrastructure of Ukraine from 21.08.2013 No. 631;
- “Code of Customs of Izmail seaport”;
- “Compulsory Regulations for Izmail seaport”;

The role of the Port Administration:

- 1) maintenance and ensuring of effective using of state property transferred to it in economic management, including modernization, renovation, reconstruction and construction of hydraulic structures and other port infrastructure facilities located on the territory of the port area;
- 2) provision of services to the vessels (ships) on approaches and directly in the seaport for safe navigation, maneuvering and parking;
- 3) organization and ensuring safe operation of exploitation of the port infrastructure objects belonged to the state ownership, including hydraulic structures, navigation safety systems located within the territory and seaport;
- 4) organization and maintenance of maritime safety;
- 5) the collection and recording of data, which are introduced in the Register of Ukrainian sea ports;
- 6) organization of making and implementation of the development plan for the sea port, the preparation of proposals for its improvement;
- 7) organization and coordination of rescue operations;
- 8) organization of lifting works of the sunken property in seaport waters;
- 9) ensuring compliance of legislation on environmental protection;
- 10) ensuring the holding of works on liquidation of consequences of contamination and seaport;
- 11) helping (assistance) to the victims;
- 12) identification of areas of obligatory using of tugs;
- 13) collection and target using of port fees;
- 14) coordination of all activities and the activities of the seaport captain, pilot service, owners of marine terminals, port operators and their entities operating in the seaport in the case of natural disasters, accidents and other emergencies that require interaction;
- 15) ensuring the creation of equal competitive conditions and economic activity and receiving services in the seaport;
- 16) control and maintenance of the depths.

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The role of the port operator (stevedoring companies):

- 1) Operates exploitation of marine terminal;
- 2) Carries out loading and unloading operations;
- 3) Serving and storage of cargoes;
- 4) Serving ships and passengers;
- 5) And also carries other related economic activities.

There are specific rules governing specifications of work process for each port, including the issues of labor safety. These regulations are based on the general state regulations (standards) that detailed processes with consideration of the characteristics of the work process in the port. (As an example - work technological maps (WTM) that are developed for each type (kind) of the goods (cargo) and take into account features of technological chain from receiving of cargo until its loading on the board of the ship, with strict comply of the requirements, including work safety.

As such, "port worker" status doesn't exist. List of working specialties (including the port sector), are contained in the "Handbook of qualifying characteristics of workers professions" developed by the Ministry of Labor and Social Policy of Ukraine. The employee must have the appropriate education and meet the qualification requirements in order to be allowed the work.

For the employment of port workers (including the labor professions) are applicable rules of general legislation, i.e. La

Bulgaria

Bulgaria has two major seaports located on the Black Sea: Varna and Burgas and two inland port on the Danube river, Ruse and Lom

Bulgarian ports are owned either by the State, a municipality or a private entity.

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The Executive Agency 'Maritime Administration' (EAMA) exercises the regulatory and control functions of the State in the field of, *inter alia*, ports similar to harbour master.

The Bulgarian Ports Infrastructure Company (BPIC) manages the infrastructure of the public transport ports of national importance similar to port administration.

Within each port area, several entities handle cargo or passenger traffic. These include state-owned port authorities and, increasingly, private concessionaires who operate along a landlord model.

The management of Bulgarian ports is governed by the Act of 28 January 2000 on Maritime Areas, Inland Waterways and Ports of the Republic of Bulgaria, further adjusted in 2004 and lastly in 2012, which also contains basic provisions on cargo handling and port labour. One of the main objectives of this act was to attract private investment in order to modernise the outdated ports infrastructure. The opening up of access to the now separately identified port services market was inspired by EU port policy developments. Since 2005, a number of port concessions were effectively granted to port operators. The process of privatisation through concessions is still ongoing. The above mentioned act also contains a definition of the term ‘port’ and a basic classification of ports according to their function.

The Act defines a "public transport port" as “any port which carries out port services and any other related activities from / to vessels and land transport means against payment, and which is available without restriction for all vessels and cargoes”.

The public transport ports of national importance are:

- Port Varna, which includes Varna-East, Varna West, Ezerovo Thermal Power Station, Petrol, Lesport, Ferryboat Complex – Varna, and Balchik;
- Port Burgas, which includes Burgas-East 1 and 2, Burgas-West, Rosenets, Nessebar;
- Port Ruse, which includes Ruse-East, Ruse-Central, Ruse-West, Silistra, Ferryboat Terminal-Silistra, Tutrakan, Svishtov, Ferryboat Terminal-Nikopol and Somovit;
- Port Lom, which includes Lom and Oriahovo;
- Port Vidin, which includes: Vidin-Center, Vidin-South, Vidin-North and Ferryboat complex - Vidin (see Art. 103a(1)).

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The notion of 'port services' includes the handling, loading, unloading, sorting, storage and repacking of cargo and mail as well as passenger services (Art. 116(1) and (2) of the Act).

Port services are further defined in Ordinance No. 19 of 9 December 2004 on the registration of ports in the Republic of Bulgaria. As a rule, cargo and passenger-related port services may only be provided in public transport ports. Port services in public transport ports shall be performed by specialised port operators that have and/or employ qualified personnel, and have the required technical means for carrying out the particular service. The training and retraining of port workers and the supply of qualified labour may be ensured by individuals or entities which are not port operators for the purposes of the Act, subject to the requirements on vocational education and training (Art. 117(3)). The Act also regulates the provision on other, ancillary, port services by concessionaires (Art. 116a). The Maritime Administration shall, *inter alia*, control the observance of the safety requirements for port facilities, the safety of labour and the safe handling of cargo by staff qualified thereto; and control the observance of the requirements on free access and the application of equal competitive conditions for the port operators (Art. 362a(3) of the Merchant Shipping Code).

Port operators shall be entered into a special register by EAMA. Each port operator must prepare a Technical Flowchart containing, the following items:

- a table setting out the number, qualifications and duties of employees (dockers and mechanics);
- rules for compliance with health and safety working conditions
- sanitary and hygiene requirements and requirements on personal protective equipment;
- specific rules for fire and emergency safety and requirements for actions in emergency situations

Upon a change in the handling technology (packaging, machinery, connecting devices, equipment, method of storage and preservation, transportation, *etc.*), the port operator has to change and/or supplement the Technical Flowchart.

Compliance with the rules on Flowcharts is supervised by the EAMA, who will carry out unannounced on-site inspections during loading and unloading operations.

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The operatives directly involved in the loading process – dockers, stevedores, signalmen, crane operators, drivers of road transport and lifting equipment, operators of specialized equipment and lines, *etc.* shall possess qualifications for the relevant position in accordance with the Vocational Education and Training Act and the Technical Requirements for Products Act.

As regards manning and qualifications, the administrative and operative staff must meet the objectives of the port and the port services provided in accordance with approved Technical Flowcharts.

Nationals of Member States of the European Union and the European Economic Area wishing to practise the profession of a “port mechanic – operator of specialised port equipment” in the Republic of Bulgaria, shall, depending on the intended specific activity, possess one or more permits such as a driver's licence or a licence for an operator of a crane, a bucket loader or a motor truck or any other relevant qualifications”.

The recognition of a licence acquired by a national of an EU or EEA Member State to exercise one or more of the occupations included in the profession “port mechanic – operator of specialised port equipment” as mentioned above shall be carried out under the relevant provisions of the Vocational Education and Training Act.

The Ports Ordinance further stipulates that port employees and workers may only be hired if they:

- are physically fit (ascertained by a medical certificate);
- have completed the educational level required for holders of the respective position;
- are duly vocationally trained and certified when a licence is required;
- have relevant work experience, if necessary.

The Federation of Transport Trade Unions in Bulgaria FTTUB added that for some functions, language skills are required and that workers must have a clean criminal record.

The port operators keep a paper-based as well as an electronic information database of certified persons working at public transport ports, in the workforce of port operators and specialised workforce companies.

The Ports Ordinance also elaborates on the employment of port workers.

First of all, the port services must be provided by port operators employing and/or contracting workforce consisting of managerial and operative personnel.

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Some aspects of port labour are further regulated by Ordinance No. 9 of 17 October 2013 on the Requirements for Operational Suitability of Ports (hereinafter: 'Ports Ordinance'). This Ordinance determines the requirements for the operation of ports and specialised port sites under the Act on Maritime Areas, Inland Waterways and Ports of the Republic of Bulgaria, for the qualifications of workers and for the issuance of operational certificates.

Otherwise port labour and, more in particular, the rights and duties of employers and workers are governed by general Bulgarian labour legislation.

The Ports Ordinance regulates the issuance of an Operational Suitability Certificate for each port, port terminal or specialised port site. In order to obtain such a certificate, the port, terminal or specialised port site must be constructed, equipped and maintained in accordance with the requirements of the Regulation, ensuring the safe reception, service and handling of vessels, passengers, cargo and mail, and the port operator must guarantee a work organisation and the use of equipment and technology that meet the requirements for a safe provision of port services and activities.

In accordance Ports Ordinance No. 9 of 17 October 2013 a procedure for the inspection and evaluation of the operational suitability of ports and specialised port sites has been introduced (PK 14-03 Procedure), under which EAMA must use a pre-established checklist.

In the event of a new port operator taking over all facilities, equipment, Technical Flowcharts and personnel of a previous provider, the Certificate may be re-issued.

The EAMA carries out scheduled, ongoing and targeted inspections. Inspections focus on, *inter alia*, health and safety conditions and the use of skilled operative personnel.

In emergency situations which put the port personnel in danger, the Executive Director of EAMA may suspend the operation of a port or terminal.

The Executive Director of EAMA may also issue binding requirements and recommendations on port operators aimed at bringing the port, terminal or specialised port site in line with the requirements of the Port Regulations

The Health and Safety at Work Act of 16 December 1997 contains general provisions on health and safety training which employers must provide for their workers. The Act contains no specific rules on port labour.

In addition, Ordinance No. 12 of 30 December 2005 specifically regulates occupational health and safety in loading and unloading operations.

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Directive 2001/96/EC establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers was transposed by Order No. 91 of 5 September 2006.

An ILO report from 2009 mentions that port labour in Bulgaria is governed by a nation-wide collective agreement for the transport sector and by collective agreements signed at port level, including at Burgas, Varna, Vidin, Ruse and Lom. The collective labour agreements deal with wages, the organisation of work, health and safety and training of port workers.

The employers in Bulgarian ports employ permanent workers. There is no pool system in Bulgaria; neither are there hiring halls. In 2012, Bulgaria introduced several amendments to its social legislation, including on temporary work agencies. The framework for temporary agency work regulates the rights and duties of the parties and is considered to offer port operators a legal basis to rely on temporary workers. The new arrangements entered into force on 1 January 2013 but no temporary agency work has been settled yet, as far as we know.

An ILO study of 2009 mentions the following data on trade union membership in Bulgarian ports, which are however not limited to port workers as defined for the purpose of the present study.

(source: ILO Report on Social Dialogue in Bulgarian Ports)

Union of Port Workers CITUB
Trade Union of Transport Workers PODKREPA
Trade Union of Dockers
Trade Union of Crane Operators
Union of Port Workers and Employees
Federation of Transport Trade Unions in Bulgaria (FTTUB)

Croatia

Croatia has 409 ports open to public traffic among which only Vukovar can be mentioned as Danube port, the others being maritime ports on Adriatic Sea

Although Croatia's port governance system follows the landlord model, the State continues to be an important actor.

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The state-owned port authorities were established for the purpose of managing and constructing ports. These are entrusted with the construction, maintenance, management, protection and promotion of the maritime domain, including the port area, and the construction and maintenance of port infrastructure, port land areas, piers and other infrastructure facilities (such as roads and railroads, water supply, sewerage, power and telephone networks and facilities for the safety of navigation in the ports).

Commercial operations are provided by Joint Stock Companies as concessionaires, with mixed stock holders including the state but also by the port authority. These companies provides port services such as loading, unloading, warehousing and transportation of cargo.

The management of Croatian ports is regulated in the Maritime Demesne and Seaports Act of 2003 (as amended) which does not deal with port labour however.

Croatia has no specific laws governing port labour. Employment conditions are governed by general labour law. A new Labour Act entered into force on 2014. It replaces the Labour Act of 2009.

Health and safety at work is likewise regulated in general legislation. A new Health and Safety at Work Act entered into force on 19 June 2014. Although the previous Health and Safety at Work Act of 1996 (amended in 1996, 2003, 2004, 2008, 2009 and 2012) was a fairly modern Act, there was a need for a new Act.

The main sources of port-specific labour regulation are company-specific collective agreements.

The employment modalities in croatian ports are both by work contract concluded with port operators and by self employment by workforce company. Port operators may employ only part of their staff directly and hire general stevedores from third companies of their free choice. The latter sector (third company) can be compared to a private pool, from which shipyards draw part of their workforce as well. All port workers receive monthly pay. Ussualy port operators empolys directly the following port workers : General Purpose Workers, Gate Clerks, Tally Clerks, Mechanic Operators (tractors, cranes, RTGs, RMGs, reach stackers and forklifts) and Foremen.

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Croatian port workers do not have to be registered. Neither do employers have to join any professional association of other sectoral entity. It is up to the shipowner to decide whether lashing and unlashing can be performed by the ship's crew. There are no hiring halls.

In Croatia are some trade unions of port workers (the ETF-affiliated Independent Union of Employees in the Port of Rijeka, the Autonomous Union of Employees of the Port of Rijeka and the Port Free Trade Union). The Autonomous Union of Employees of the Port of Rijeka is affiliated to the Dockers Union of Croatia and ETF. Other unions representing port workers in Croatia include the Independent Dockers Union of Dalmatia and Plovput Split Employees Union. No trade unions are in port of Vukovar

In Croatian ports no sector-specific qualification standards apply. Manual workers are trained by the employer. Port equipment drivers will have to have attended general State-provided education programmes. As the state offers no specific education for signalmen, these workers need an additional training certificate under Ordinance No. 5/84 which regulates professions that are performed under special working conditions.

There are some training services providers as the State-run High School for Operators of Port Equipment in Rijeka, while the Nautical School at Bakar has a ship's hatch equipped with derricks.

Some port operators stated that – even if it is not under a legal duty to do so – it organises training courses of its own and that to this end it has developed company-specific manuals on twistlocks, lashing and unlashing. They also encourage multi-skilling; the majority of equipment drivers handles all types of machinery (forklift, cranes and RTGs). However, the Maritime Development and Integrated Maritime Policy Strategy of the Republic of Croatia for 2014 to 2020, which was adopted in December 2013, proposes the launching of an education and certification system for dock workers in order to raise the levels of safety, capacity and quality of service. It also envisages measures to enhance the safety and security levels at ports. Health and safety at work is governed by general laws and regulations.

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Germany

From a governance perspective, a distinction is made between five types of ports: ports that belong to a City State (*i.e.* a municipality which is at the same time an autonomous Region within the German Federation; ports that belong to a municipality, ports that belong to a Land and partially to a municipality, ports that belong to private companies. Cargo handling in German ports is carried out by private companies. As a rule, public port authorities are not involved in these operations.

First and foremost, port labour in Germany is governed by the Act on the Establishment of a Special Employer of Port Workers of 3 August 1950 (hereinafter referred to as the 'Port Labour Act'), the local agreements (*Vereinbarungen*) under which labour pools (*Gesamthafenbetriebe*) were established, and the statutes (*Satzungen* or *Verwaltungsordnungen*) of these pools. General labour law is only applicable to the extent that no special laws and regulations on port labour apply. Further relevant instruments at national level include the Act on the Implementation of Protective Measures for the Improvement of Safety and Health of Employees at Work, the Labour Law Code and the safety regulations made thereunder, and the Civil Code. Directive 2001/96/EC of 4 December 2001 establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers was already transposed in 2002.

It is a well-established opinion that the German Temporary Agency Work Act is of no relevance to the *Gesamthafenbetriebe*, because the Port Labour Act, as a special law, takes priority over it. In 2011, however, the scope of the Temporary Agency Work Act was extended to non-profit temporary work agencies. As a result, the *Gesamthafenbetriebe* are now governed by that Act and need official permission to supply temporary workers. In the absence of express legislative provisions, the inter-relation between the Temporary Agency Work Act and the Port Labour Act remains an obscure area however.

National collective agreements are negotiated between the associations of port operators and trade union federations. These national agreements lay down rates of pay, working times and various social benefits. National collective agreements are

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supplemented by special provisions negotiated at local level which apply to firms and employees in individual ports.

Today, most German port workers are permanently employed, either by a single company or by a Gesamthafenbetrieb (Joint Port Enterprises-GHBG), and have a stable income. However, the Gesamthafenbetriebe also supply occasional auxiliary workers, who are hired for one shift and obtain a „red card”; these workers receive no unemployment benefits and are not protected against dismissal.

The currently applicable Port Labour Act from 1950 merely provided a legal basis for existing practices, namely the operation of the Gesamthafenbetrieb as the German manifestation of the port labour pool, which had been established in German ports in the first half of the 20th century.

Today, the Port Labour Act stipulates that, with a view to the creation of steady employment conditions for port workers, a "special employer" for a port called Gesamthafenbetrieb may be established by the port companies where port labour is carried out, by means of a written agreement concluded either by employers' associations and trade unions or by individual employers and unions. These Gesamthafenbetriebe are not allowed to carry out any commercial activity according to the Port Labour Act. Where the competent Employment Agency establishes that the members of the employers' association which has signed the agreement, or, as the case may be, the companies who have individually signed the agreement, were employing at least 50 percent of the port workers during the past quarter, the Gesamthafenbetrieb also includes all other port companies (the so-called *Aussenseiter* or outsiders).

The scope of the Port Labour Act is determined by two criteria: it only applies to (1) port labour (2) performed within port companies.

Neither the Port Labour Act, nor any other regulation or practice provides a national definition of port labour. In conformity with its overall objective to further auto-regulation, the Port Labour Act expressly entrusts the Gesamthafenbetriebe with the task of laying down this definition. In other words, the exact meaning of port labour must be determined at port level, which may of course result in differences between ports. These definitions gave rise to legal disputes, following which the local definitions had to be adapted. Importantly, local definitions adopted by the

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Gesamthafenbetrieb can be tested against the wording and rationale of the Port Labour Act, which refers to a given, legally binding concept of port labour which must be observed by the social partners.

The notion of a port company is not defined in the Port Labour Act either. Case law and legal doctrine have clarified that, in order for the Port Labour Act to apply, the performance of port labour must be a core activity of the company (but it is not required that it is the only core activity). It is irrelevant whether the company is established within the port area; in other words, the legal regime of port labour cannot be evaded through a relocation of the seat of the company outside the port area. Ultimately, the test is whether port labour is performed systematically within the company and whether it forms a substantial part of its overall activity. The Port Labour Act applies to maritime ports as well as inland ports.

Although the Port Labour Act has not introduced a national scheme for the registration of port workers, registration is a prerequisite to work in those ports where a Gesamthafenbetrieb has been established. Permanent port workers are employed by individual port companies. The conclusion of these employment contracts must be notified to the Gesamthafenbetrieb and the employees receive a port worker's card. Although the individual port undertakings carry out some of the employer's functions in relation to the pool workers, the Gesamthafenbetriebe (or the legal person representing them) act as their legal employer. Nevertheless, for certain aspects, the individual port undertaking is considered the employer. In labour law doctrine, the model is often analysed as a "double" or "split-up" employer status. The Gesamthafenbetrieb employs the pool worker as a Super-Company, as it were, but this employment relationship fades into the background while the worker is performing a task for an individual cargo handling company. The role of the Gesamthafenbetrieb as an employer has also been termed "subordinate". In relation to the auxiliary workers, the Gesamthafenbetrieb is not considered their legal employer, but merely acts as an intermediary employment officer. However, in a case where a Gesamthafenbetrieb had used a auxiliary worker for 8 years (who on average performed 100 shifts per year and who had concluded an agreement with the Gesamthafenbetrieb under which he agreed (1) to attend a training course while the Gesamthafenbetrieb continued to pay his wages and (2) to remain available to the Gesamthafenbetrieb for three additional years), the Labour Court of Hamburg

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concluded that a long-term employment relationship had come into being, and reclassified the worker as a pool worker.

Upon registration, every port worker, whether employed on a permanent basis by an individual port company or as a pool worker by the Gesamthafenbetrieb, receives a port worker's card from the Gesamthafenbetrieb. Only this card establishes the worker's entitlement to carry out port work. The Statute expressly provides that all employees must carry a valid card issued by the GHBG upon nomination by an individual port company .

Port labour is defined as the loading and unloading of ships as well as the connected upstream, downstream and accompanying activities. The latter activities include:

- (1) cargo securing (lashing and securing), the handling of ship's gear, signalman tasks, the cleaning of ships and boilers as well as the driving of hoisting gear, cargo handling vehicles and transportation equipment on board;
- (2) the delivery of loaded goods from the quay into the ship and of unloaded goods from the ship onto the quay, outboard transshipment as well as the driving of hoisting gear, cargo handling vehicles and transportation equipment on the quays;
- (3) the packing and unpacking and the cleaning of containers; the reception and delivery of goods and containers; the loading and unloading of railway wagons, lorries and watercraft; provided that the cleaning, reception and delivery of containers in container depots and container repair yards is not port labour however;
- (4) warehousing work; the controlling of cargo and commodities; the controlling of the entry, departure and condition of cargo receptacles;
- (5) storage of goods;

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- (6) work in distribution facilities (reception, sorting, commissioning, assembling, storage and delivery);
- (7) navigation in port and assistance to seagoing vessels with the exception of commercial carriage of passengers;
- (8) mooring and unmooring of ships; Mooring and unmooring is not dock work in the proper sense, but a technical-nautical service
- (9) maintenance and repair of hoisting gear, cargo handling vehicles, transportation equipment and refrigerating units, to the extent that these are performed by individual port companies;
- (10) the organisation and supervision of the workflow (for example, in dispatch departments and warehouse offices as well as by loading supervisors, work planners, container dispatchers, warehouse managers and ship's planners.

The port workers are divided into 4 categories:

- (1) permanent workers employed by individual port companies;
- (2) pool workers who are employed by the Gesamthafenbetrieb, and allocated to individual port companies;
- (3) auxiliary workers whom the GHBG may request from the official Employment Office or hire out to an individual company (in practice, the Gesamthafenbetrieb has taken over the tasks of the Employment Office);
- (4) apprentice workers.

The individual port companies may only employ permanent workers holding a valid card and workers allocated to them by the GHBG. Individual port companies may impose a company ban on a pool worker if his personality or behaviour gives rise to grounds for dismissal, which must immediately be communicated to the GHBG.

The companies may only employ permanent workers on condition that the envisaged duration of their employment is at least 2 months. Furthermore, these workers may only perform work within the employing company, unless the GHBG grants an exemption. In order to support the employment of pool workers, the GHBG may set limits on the use of overtime work by the individual companies. The latter does not happen in practice however.

The Gesamthafenbetrieb also functions as the sole transfer point for surplus port workers of individual companies. Port companies can offer excess capacity to the Gesamthafenbetrieb, but the latter is not obliged to accept. In principle, the

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Gesamthafenbetrieb will only allow the transfer of permanent port workers between port companies when its pool workers cannot meet the labour needs of the user company, and such transfers are moreover subject to the payment of a fee to the pool. Consent by the GHBG is not needed however in individual cases where workers are exchanged between companies belonging to the same group or within the framework of vertical cooperation. In the past, the assignment by the Gesamthafenbetrieb of unemployed permanent workers of individual companies to other port employers was considered to remain outside the scope of the Temporary Work Agencies. The Gesamthafenbetrieb clarified that today exchanges of workers between companies occur rarely and that the fee which it charges is very low. Exchanges between companies belonging to the same group must indeed be permitted by the Board of the Gesamthafenbetrieb. Every three months, the latter has to report all exchanges of workers to the Federal Labour Agency.

The Gesamthafenbetrieb has a hiring hall where the staffing needs of the port companies are recorded and where, as a rule, the port workers report to find out their temporary place of work. Today, most of the port work is planned beforehand and usually the port workers receive their instructions by telephone. Currently, there is no computerised hiring.

Pursuant to individual agreements with the GHBG, which must be renewed annually, some companies rely on fixed Quota of reserved pool workers, for the availability of which they pay an extra contribution. When allocating pool workers, the GHBG is obliged to give priority to the needs of the companies which are entitled to a Quotum. As far as possible, the GHBG shall supply the quota in the form of a Company Group of workers. The latter workers are sent out to the same company as often as possible. Today, some 60 to 70 per cent of pool workers are members of such a Company Group. As a result, a large majority of the Gesamthafenbetrieb's own pool workers always work at the same terminal.

Only in case of a temporary shortage of pool workers the GHBG may admit auxiliary workers. Individual companies may only use auxiliary workers with the consent or through the mediation by the GHBG. This also applies to the use of temporary workers in the context of sub-contracting or temporary work agency services. During their assignment, the auxiliary workers are members of the workforce of the user company, not of the workforce of the Gesamthafenbetrieb. Auxiliary workers are

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hired for one shift only; continued or repeated employment must be agreed to by the GHBG.

In ports where no Gesamthafenbetrieb was founded, port workers are employed on the basis of general labour law. Due to the port workers registration is not mandatory it can be missing in some ports as well. Also bans on temporary agency work.

There are no official nation-wide statistics on the number of port workers in Germany

German port labour is highly unionised. The main trade union for port workers in German ports is the United Services Union (Vereinte Dienstleistungsgewerkschaft, ver.di). Ver.di is the second biggest trade union in Germany, and the largest one in the services sector. It was established in 2001.

The general trend in German ports lead towards an increased use of technology in cargo handling. Port workers have become highly skilled workers who must be able to drive cranes and straddle carriers or operate cold storage facilities; port work can no longer be carried out by unskilled workers. But in the logistics sector, many unskilled workers continue to find employment.

Apart from training, employers attach an increasing importance to attitude, team spirit and social skills.

The Maritimes Kompetenzzentrum (ma-co), which resulted from a merger of the Port Vocational School at Bremen (Hafenfachschule Bremen), the Hamburg Port Training Centre (Fortbildungszentrum Hafen Hamburg, which was founded in 1975) and the HHLA Vocational School (HHLA-Fachschule), which has its origins in the Kaifachschule, founded in 1927), offers a modular training programme for port workers. This training is competency-based and designed to offer greater flexibility for both employers and employees. The training is consistent with the European Qualifications Framework (EQF). Ma-co employs about 20 permanent trainers and 75 freelance trainers with practical experience. It has well-equipped schooling sites in Hamburg, Bremen and Wilhelmshaven. In Hamburg, it uses a container crane simulator. The Board of ma-co is composed of representatives of associations of port companies and the trade union ver.di.

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Importantly, since 1975 all port workers in Hamburg, Bremen and Niedersachsen have the right to be trained as professional port workers. Port workers who successfully attend specific training courses can enter into a higher and better-paid job category.

On 31 December 2011, more than 4,700 training certificates had been issued to Hamburg's pool workers. On average, these workers possess at least 4 certificates, in addition to the common forklift certificate. As a result, Hamburg's pool workers can be deployed with considerable flexibility.

Each year, considerable numbers of workers receive specialised training, which is partly aimed at multi-skilling. Specific educational programmes in port logistics are offered as well. Trainees can obtain a certificate as a professional logistics worker. For a number of jobs, a driver's licence is needed. For example, where auxiliary workers are employed to load and unload cars they need a driver's licence B. Even well trained port workers feel a need to be better trained in port-related English, use of computers, EU developments and the handling of dangerous goods.

Health and safety : Today, port labour is subject to the general legislation on occupational health and safety. These general rules are laid down in the Labour Protection Act. It sets out duties for the employer to minimize safety risks, to arrange and maintain safe workplaces and to carry out a risk analysis for each workplace. The Act is also the legal basis for a number of regulations, for example regulations on noise and vibrations at work and regulations on the handling of heavy loads. Some safety aspects are governed by local regulations

Restrictions on employment and restrictive working practices

Even if German ports are believed to be highly productive, some restrictive rules and practices apply.

First of all, only workers possessing a port worker's card may be employed legally, and a possible closed shop issue arises.

Secondly, at least in some cases employers have no freedom to decide on the number and type of workers whom they are going to employ. For example, the *Verwaltungsordnung* for Bremen and Bremerhaven expressly obliges employers

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ordering workers to hire the necessary winchmen and signalmen as well. But generally, collective agreements do not seem to impose manning scales. Several interviewees confirmed that stevedores are indeed free to decide on the number of workers they are engaging.

Thirdly, some restrictions apply to the shifting of workers between tasks and ships in the course of one shift. In Bremen and Bremerhaven, pool and auxiliary workers may be moved to another ship or to a quayside job only once during the same shift. Workers redeployed for quayside work may only be obliged to work in the warehouses alongside the same ship. Redeployment of workers hired for quayside work to another ship of the same cargo handler is only possible after they have completed their task on the first ship. However, pool or auxiliary workers may be moved between ships and workplaces within the same company, but in case of a shift to another ship, the whole gang must be moved.

Fourthly, self-handling by ship's crews is not permitted.

Fifthly, employers may as a rule not rely on temporary agency workers or subcontracting. A ro-ro shipping line can need experienced terminal drivers who do not cause damage. Temporary work agencies are unable to provide a steady workforce who have the required profile and are aware of the particular safety risks in the port.

Sixthly, cargo handling companies are as a rule not allowed to directly exchange workers between themselves.

Seventhly, the lack of flexibility resulting from the shift system which is perhaps the most pressing issue in German ports today.

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4. Conclusions

The survey conclusions are based only on references to competence of port labour.

At EU level the port sector is characterised by high diversity of organizational, management and requirements even all ports finally provide , generally speaking, the same port services package

As a core idea all ports fighting to meet market demands as a strong competition occurs, at least during the last decades, on the market.

The port labour competency has become more and more a critical issue and in the same time a strategic tool to rise the port services quality

It's time for all ports to focuss on labour force at least as much as on innovation.

A short summary of the main findings resulted from the survey has been structured on

	Romania	Rep.of Moldova	Ukraine	Bulgaria	Croatia	Germany
Port management	Landlord	Service	Landlord	Landlord	Landlord	Landlord
Port worker concept is defined?	YES	NO	YES	YES	YES	YES
Does requirements for port workers competence and training exist?						
Health and safety special regulations for port workers is in force?						
Training & qualification services for port workers are available?						
Social dialogue is working?						

5. Documentation



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Labour Market Qualifications & Training Health & Safety/ Advocate, Eric Van Hooydonk /2014

Port reform toolkit/EC

ILO's Portworker Development Programme and Guidelines