European Commission

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Port Services Regulation

Questions received and answers provided on interpretation of PSR

@Transport_EU

Mobility and Transport

CONNECTING EUROPE

Overview and Disclaimer

- 25 questions received, originating from:
  - 4 Member States
  - 3 stakeholders
  - 1 EEA country

DISCLAIMER:

Please note that the replies were prepared by the Directorate-General for Mobility and Transport and do not commit the European Commission.
Moreover, only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

1. Article 1(4) – Subject matter and scope

- **Question**

- Does the Regulation apply to private TEN-T-ports that are not open to general transport, but are used only by their owner?

1. Article 1(4) – Subject matter and scope

- **Answer**

- Article 1(4) PSR: *This Regulation applies to all maritime ports of the trans-European transport network, as listed in Annex II to Regulation (EU) No 1315/2013.*

- The Regulation defines maritime port as

- *"…an area of land and water made up of such infrastructure and equipment so as to permit, principally, the reception of waterborne vessels, their loading and unloading, the storage of goods, the receipt and delivery of those goods and the embarkation and disembarkation of passengers, crew and other persons and any other infrastructure necessary for transport operators within the port area;"*

- The Regulation does not distinguish between the ports open to general transport or used solely for purposes of the port's owner. Therefore, the Regulation applies irrespective of such status.

2. Article 2(1) – Definition of Bunkering (1)

- **Question**

- Does bunkering include the provision of solid, liquid or gaseous fuel or of any other energy source used for the propulsion of the waterborne vessel whilst it is anchored, rather than berthed?

2. Article 2(1) – Definition of Bunkering (1)

- **Answer**

- Article 2(1) PSR: 'bunkering' means the provision of solid, liquid or gaseous fuel or of any other energy source used for the propulsion of the waterborne vessel as well as for general and specific energy provision on board of the waterborne vessel whilst at berth.

- This definition includes the provision of solid, liquid or gaseous fuel or of any other energy source used for the propulsion of the waterborne vessel, also whilst the vessel is anchored rather than berthed.

- 'bunkering' means the provision of solid, liquid or gaseous fuel or of any other energy source used
  - for the propulsion of the waterborne vessel as well as
  - for general and specific energy provision on board of the waterborne vessel whilst at berth

3. Article 2(1) – Definition of Bunkering (2)

- **Question**

- Who should be considered the "provider of port bunkering service" pursuant to EU Regulation 2017/352: supplier of the fuel, company selling the product, oil company, trader, logistic operator in charge of transportation and effective supply or delivery of fuel to the vessel?

3. Article 2(1) – Definition of Bunkering (2)

- **Answer**

- The bunkering service provider to which the Regulation applies, in accordance with its Article 2(1), is the operator that provides the solid, liquid or gaseous fuel or any other energy source used (1) for the propulsion of the waterborne vessel as well as (2) for general and specific energy provision on board to the waterborne vessel whilst at berth.

4. Article 2(1) – Definition of Bunkering (3)

- **Question**

- We want to introduce a bunkering permit (…)

- The PSR gives us (limited) scope to set up an authorisation. The minimum requirements are set at the same level, i.e. we should not impose any requirements in addition to those set out in the PSR.

- It is up to us to obtain authorisation or to be authorised to do so. Is that the carrier: the actual supplier of the fuel (the 'pump') or the supplier (the owner of the fuel, until it is delivered on board and accepted by the vessel's command)? Thus, the theoretical supplier.

4. Article 2(1) – Definition of Bunkering (3)

- **Answer**

- In accordance with Article 2(1) of the Regulation, 'bunkering' means the provision of solid, liquid or gaseous fuel or of any other energy source used for the propulsion of the waterborne vessel as well as for general and specific energy provision on board of the waterborne vessel whilst at berth.

- The bunkering service provider to which the Regulation applies, in accordance with its Article 2(1), is the operator that provides the solid, liquid or gaseous fuel or any other energy source used (1) for the propulsion of the waterborne vessel as well as (2) for general and specific energy provision on board to the waterborne vessel whilst at berth.

- The bunkering service provider in the sense of Article 2(1) of the Regulation is therefore not the administrative supplier.

5. Article 2(8) – Definition of Pilotage

- **Question**

- If it is decided not to apply Chapter II of the Regulation to pilotage services, should the provision of the service from the piloting station be allowed?

- If it is decided to apply Chapter II of the Regulation to pilotage services, should the provision of the service from the piloting station be allowed?

5. Article 2(8) – Definition of Pilotage

- **Answer**

- Article 2(8) PSR: 'pilotage' means the guidance service of a waterborne vessel by a pilot or a pilotage station in order to allow for safe entry or exit of the waterborne vessel in the waterway access to the port or safe navigation within the port.

- Definition ofArticle 2(8) PSR is broader than the one contained in the national legislation, as it considers the pilotage service to be provided *either* by a pilot *or* a pilotage station. Both situations fall under the pilotage definition.

- In accordance with Article 10(2) of the Regulation Member States may decide to apply this Chapter and Article 21 to pilotage. Member States shall inform the Commission of such a decision.

- If a Member State decides to apply the relevant provisions of the Regulation to pilotage, this must necessarily include the application of the definition of 'pilotage' contained in Article 2(8) of the Regulation. Therefore, the definition of 'pilotage' as contained in Article 2(8) of the Regulation will also apply in and to that Member State.

6. Article 2(10) – Definition of Collection of ship-generated waste and cargo residues

- **Question**

- Should the collection of cargo residues be obligatorily included in a port's waste collection service or, rather, may a Member State regulate the collection of cargo residues separately from a port service?

6. Article 2(10) – Definition of Collection of ship-generated waste and cargo residues

- **Answer**

- A Member State may split the relevant services into two categories and regulate them separately under national law, but the application of the Regulation cannot depend on the classification of services under national law.

- A port reception facility is defined in Article 2 of Directive 2000/59/EC on port reception facilities for ship generated waste and cargo residues as 'any facility, which is fixed, floating or mobile and capable of receiving ship-generated waste or cargo residues'. This includes cargo residues as included in Annex V, but also tanks washing covered by MARPOL Annexes I (slops) and II (NLS).

- Therefore, for the purposes of the Port Services Regulation, both ship generated waste and cargo residues fall within the definition of 'collection of ship generated waste and cargo residues' contained in Article 2(10) of the Regulation and both ship generated waste and cargo residues will have to be considered as constituting port services subject to the Regulation.

7. Article 4(2) – Minimum requirements (1)

- **Question**

- Is it compliant with the Regulation to require, as technical and professional solvency, that both the applicant provider enterprise and part of its workers have prior specific experience in providing the service at a port, in addition to qualifications?

7. Article 4(2) – Minimum requirements (1)

- **Answer**

- Article 4(2) PSR: exhaustive list of the minimum requirements, which may be applied by the managing body of the port, or the competent authority with regard to the providers of port services, including subcontractors

- Minimum requirements may relate to the professional qualifications of the provider of port services, its personnel or the natural persons who actually and continuously manage the activities of the provider of port services.

- Article 3(1)(b) of Directive 2005/36 of 7 September 2005 on the recognition of professional qualifications: Professional qualifications should be understood as qualifications attested by diplomas, certificates and other evidence of formal qualifications, an attestation of competence and/or professional experience. This minimum requirement can be applicable to both the service provider and/or (part of) its personnel.

8. Article 4(2) – Minimum requirements (2)

- **Question**

- Can a requirement be imposed, consisting of the enterprise having a minimum number of workers to provide a port service, particularly for mooring or pilotage, if it is decided that Chapter II of the Regulation is applicable to this service?

8. Article 4(2) – Minimum requirements (2)

- **Answer**

- Article 4(2)(d) allows setting of minimum requirements related to the availability of the relevant port service to all users, at all berths and without interruptions, day and night, throughout the year.

- Application of the minimum requirement related to the availability of the relevant port service may, depending on the situation, imply that the service provider must have the necessary capacity to conform to that requirement, including making available necessary staff and equipment. This should not lead, in general, to the imposition of a requirement concerning a minimum number of workers, unless due to the nature of the port service concerned such a requirement is justified by the need to ensure the availability of the relevant port service in accordance with Article 4(2)(d) of the Regulation.

- Article 4(4): minimum requirements shall be transparent, objective, non-discriminatory, proportionate and relevant to the category and nature of the port service concerned

9. Article 4(2) – Minimum requirements (3)

- **Question**

- Is it possible to establish service conditions other than the minimum access requirements foreseen in Article 4 of the Regulation, such as establishing a term of validity for the service licence, the need to take out civil liability insurance, local operation conditions, guarantees, the achievement of quality and productivity indicators, economic penalties in the event of a breach, etc.?

9. Article 4(2) – Minimum requirements (3)

- **Answer**

- Article 4(2) PSR: the minimum requirements imposed by the managing body or the competent authority, may only relate to the points enumerated in this paragraph.

- Therefore, as regards the minimum requirements highlighted in the question, they can only be applied if they relate to the points specified in Article 4(2) of the Regulation.

- These requirements would need to be assessed on a case-by-case basis.

- Please note that the requirements must also fulfil the conditions of Article 4(4)-(6) of the Regulation.

10. Article 4(3) – Minimum requirements (4)

- **Question**

- Article 4(3) states that a Member State has the possibility (certain circumstances given) to implement a flag requirement for tugs in ports.

- Are there MS who already have (officially) stipulated a flag requirement based on Article 4(3)? Or do you know if any Member State intends to do so?

10. Article 4(3) – Minimum requirements (4)

- **Answer**

- The Commission up to this point has not received any formal notification regarding Article 4(3), nor is it aware of any Member State intending to do so.

- Article 4(3) does not refer to a national flag, but to "a flag" (to be understood as the flag of any EU Member State). A national flag requirement would not be in line with the provisions of Article 4(4) and in particular the requirement for minimum requirements to be non-discriminatory.

- Recital 17 PSR, which clarifies that a flag requirement should be non-discriminatory, should be based on transparent and objective grounds and should not introduce disproportionate market barriers

11. Article 6 – Limitations on the number of port service providers

- **Question**

- Does the Regulation imply that there is at time limit for how long a decision regarding limitation of the number of providers can be valid?

- Can the internal operator decide to limit the access for other providers forever, or do they have to reconsider the question after some years?

11. Article 6 – Limitations on the number of port service providers

- **Answer**

- Article 6 of the Regulation, that allows for limitation on the number of providers of port services, should be interpreted in line with Recital 20 of the Regulation.

- This Recital states that "Any limitation on the number of providers of port services (…) should not introduce disproportionate market barriers."

- An unlimited duration of the limitation could constitute such a disproportionate market barrier. The limitation on number of providers should be regularly reviewed in order to verify that it does not amount to disproportional market barrier.

12. Article 6(1)(d) – Limitations on the number of port service providers

- **Question**

- Does this clause mean that the number of service providers can be limited because it is not possible for more than a certain numbers of providers (even only one) to get a decent income from providing the service in the port?

12. Article 6(1)(d) – Limitations on the number of port service providers

- **Answer**

- Article 6(1)d) allows for a limitation on the number of providers of port services based on objective criteria pertaining to the characteristics of the port infrastructure or the nature of the port traffic.

- This Article does not allow to limit the number of service providers on the basis of the amount of income of the provider.

13. Article 6(2) and 6(4) – Limitations on the number of port service providers

- **Question**

- In case of a limitation on the number of port services providers, if the managing body of a port selects the port service provider through an ordinary tender procedure, does he still have to apply the procedure laid down in Article 6(2) and (4)? In the view of some of our correspondents, this could constitute an additional burden on a procedure which is already very protective.

13. Article 6(2) and 6(4) – Limitations on the number of port service providers

- **Answer (1)**

- Article 6 of the Regulation sets out the provisions governing limitations on the number of providers of port services. As such, the provisions of Articles 6(2) and 6(4) of the Regulation are specific rules to be applied when the number of providers is to be limited.

- In this sense, Article 6(2) of the Regulation sets out specific rules on the publication and information required regarding the limitation of providers:

- *"In order to give interested parties the opportunity to submit comments within a reasonable period, the managing body of the port, or the competent authority, shall publish any proposal to limit the number of providers of port services in accordance with paragraph 1 together with the grounds justifying it at least three months in advance of the adoption of the decision to limit the number of providers of port services."*

13. Article 6(2) and 6(4) – Limitations on the number of port service providers

- **Answer (2)**

Article 6(2) governs several aspects of the intended limitation of providers:

- It grants interested parties the opportunity to submit comments;
- It requires the managing body of the port, or the competent authority, to publish a proposal to limit the number of providers,
- It requires the managing body of the port, or the competent authority, to state the grounds justifying the limitation of providers;
- It requires the managing body of the port, or the competent authority, to publish the proposal at least three months before taking a decision;
- It requires the managing body of the port, or the competent authority, to take a decision on the proposal to limit the number of providers of port services.
- This procedure is therefore specific to the limitation and separate from the tender or selection procedure.

13. Article 6(2) and 6(4) – Limitations on the number of port service providers

Answer (3)

- Article 6(4) governs the rules of the tender or selection procedure when a managing body of the port, or the competent authority, decide to limit the number of providers of port services:

- *"Where the managing body of the port, or the competent authority, decides to limit the number of providers of a port service, it shall follow a selection procedure which shall be open to all interested parties, non-discriminatory and transparent. The managing body of the port, or the competent authority, shall publish information on the port service to be provided and on the selection procedure, and shall ensure that all essential information that is necessary for the preparation of their applications is effectively accessible to all interested parties. Interested parties shall be given long enough to allow them to make a meaningful assessment and prepare their applications. In normal circumstances, the minimum such period shall be 30 days."*

13. Article 6(2) and 6(4) – Limitations on the number of port service providers

Answer (4)

- The rules contained therein are specific and mandatory ("shall") for these cases.
- For the selection of limited provider(s) of port service(s) the rules set out in Article 6(4) of the Regulation need to be followed in the tender procedure.

14. Article 6(7) - Limitations on the number of port service providers

- **Question**

- We have an interrogation on the consequences if a Member State decides to make use of Article 6 paragraph 7. Does it allow a managing body of a port, under a certain traffic threshold, to limit the number of port services providers without having to apply the procedure of article 6?

14. Article 6(7) - Limitations on the number of port service providers

- **Answer**

- Article 6(7) of the Regulation allows Member States to limit the number of providers in ports of the comprehensive network when the total annual cargo volume – either for bulk or for non-bulk cargo handling – does not reach 0,1 % of the corresponding total annual cargo volume handled in all maritime ports of the Union. This has to be understood as an additional reason to limit the number of service providers to the reasons listed in Article 6(1) of the Regulation.

- Therefore, in the case of a limitation of providers on the reason established in paragraph 7, the provisions of Article 6 are also applicable and, hence, Articles 6(2) and 6(4) of the Regulation need to be applied, like for any other case of limitation of providers foreseen in Article 6 of the Regulation.

15. Article 10 - Exemptions

- **Question**

- May a Member State decide to voluntarily apply Chapter II of EU Regulation 2017/352 to cargo-handling and passenger services?

15. Article 10 - Exemptions

- **Answer**

- Recital 38: […] while Chapter II of this Regulation should not apply to the provision of cargo-handling and passenger services, Member States should remain free to decide to apply the rules of Chapter II to those two services […]

- In this case, Member States should adopt national law similar to the rules of Chapter II.

- Differently from pilotage (Article 10(2) of the Regulation), they are not explicitly obliged to inform the Commission.

- The principles related to the functioning of the internal market and competition, as set out in the case-law of the Court of Justice, will continue to apply to those services in any case.

16. Article 12 – Port service charges

- **Question**

- Is it possible to continue requiring under national regulations that providers are subject to the maximum tariffs approved by the managing body of a port, applicable in the following cases only?

  - When the number of providers has been limited for any of the reasons foreseen in national legislation and the Regulation.

  - When the number of providers is not limited, but there is an insufficient number to guarantee effective competition.

16. Article 12 – Port service charges

- **Answer**

- Recitals 11 and 40 PSR

- The Regulation does not affect the Member States' right to regulate charges for port services in order to avoid over-charging in a situation where there is no effective competition.

- Member States retain their existing right to regulate charges – in particular in the context of public service obligations – in so far as the relevant national measure does not restrict the freedom to establishment, the freedom to provide services, and complies with Union law in the field of competition and state aid. The national provisions regulating tariffs for a particular service would have to be assessed individually, on a case by case basis, against those requirements.

- The national provisions must also ensure compliance with Article 12 of the Regulation.

17. Article 13 – Port infrastructure charges (1)

- **Question**

- Article 13 states that «Member States shall ensure that a port infrastructure charge is levied». Is this to be understood literally, - shall infrastructure providers not be allowed to offer infrastructure free of charge? This may not happen often, but in principle it *may* happen.

17. Article 13 – Port infrastructure charges (1)

- **Answer**

- Under Article 13(1) of the Regulation Member States must ensure that a port infrastructure charge is levied. Article 13(2) provides that the structure and the level of charges shall be determined according to port's own commercial strategy and investment plans, and shall comply with competition rules.

- Therefore, subject to further explanations, the offering of infrastructure free of charge would appear to be incompatible with Article 13, as well as with the commercial autonomy of the ports which underlies its provisions.

18. Article 13 – Port infrastructure charges (2)

- **Question**
  - To what extent may national governments limit the negotiating power of port authorities by setting general requirements within their national ports policy?
  - Article 13 on infrastructure charges could in some ways be seen as a sort of consolidation of the current 2-tier system consisting of ports which can develop their charging system in an autonomous way and those ports that do not have these basic management tools.

18. Article 13 – Port infrastructure charges (2)

- **Answer (1)**

  - Article 2(9) PSR: 'port infrastructure charge' means a charge levied, for the direct or indirect benefit of the managing body of the port or of the competent authority, for the use of infrastructure, facilities and services, including the waterway access to the port concerned, as well as access to the processing of passengers and cargo, but excluding land lease rates and charges having equivalent effect.

  - Article 13(3) PSR: In order to contribute to an efficient infrastructure charging system, the structure and the level of port infrastructure charges shall be determined according to the port's own commercial strategy and investment plans, and shall comply with competition rules. Where relevant, such charges shall also respect the general requirements set within the framework of the general ports policy of the Member State concerned. (Chapter III: Financial transparency and autonomy)

18. Article 13 – Port infrastructure charges (2)

- **Answer (2)**

  - **Recital 47 PSR:** In order to be efficient, the port infrastructure charges of each individual port should be set in a transparent way in accordance with the port's own commercial strategy and investment plans and, where relevant, with the general requirements laid down within the framework of the general ports policy of the Member State concerned.

  - **Recital 48 PSR:** This Regulation should not affect the rights, where applicable, of the ports and their customers to agree commercially confidential discounts. [...]

18. Article 13 – Port infrastructure charges (2)

- **Answer (3)**
  - **Recital 49 PSR:** The variation of port infrastructure charges should be allowed in order to promote short sea shipping and to attract waterborne vessels which have an environmental performance, energy efficiency or carbon efficiency of transport operations, in particular offshore or onshore maritime transport operations, that is better than average. That should help to contribute to the attainment of environmental and climate change policy goals and the sustainable development of the port and its surroundings, in particular by contributing to the reduction of the environmental footprint of the waterborne vessels calling and staying in the port.

18. Article 13 – Port infrastructure charges (2)

- **Answer (4)**
  - **Recital 50 PSR:** Depending on the economic strategy of the port, port spatial planning policy or port commercial practices and, where relevant, the general ports policy of the Member State concerned, the variation of port infrastructure charges may result in rates being set at zero for certain categories of users. Such categories of users could include, among others, hospital ships, vessels in scientific, cultural or humanitarian missions, tugs and floating service equipment of the port.

18. Article 13 – Port infrastructure charges (2)

- **Answer (5)**

- The measures provided in the framework of a general policy may not be set in such a manner as to devoid of its purpose the requirement that port infrastructure charges are to be set autonomously by ports, in accordance with their commercial interests and the conditions set in the PSR.

- PSR does not prevent a Member State who owns part or all of the ports on its territory to exercise its shareholder rights and participate accordingly in the determination of the commercial and investment plans of their individual ports, according to which the level and structure of port infrastructure charges are set.

19. Article 13 – Port infrastructure charges (3)

- **Question**

- *[Currently the maximum port infrastructure charges are set in national legislation. The port authorities may set such charges within the maximum limits set in the legislation.]*

- Is it possible to keep maximum port infrastructure charges in the national legislation?

- Some stakeholders are against the removal of maximum port infrastructure charges in the national legislation, as they are afraid the charges will rise uncontrollably.

19. Article 13 – Port infrastructure charges (3)

- **Answer**
  - Article 13(3) PSR: In order to contribute to an efficient infrastructure charging system, the structure and the level of port infrastructure charges shall be determined according to the port's own commercial strategy and investment plans, and shall comply with competition rules. Where relevant, such charges shall also respect the general requirements set within the framework of the general ports policy of the Member State concerned. (Chapter III: Financial transparency and autonomy)
  - Article 13(5) requires that port users and the representatives or associations of port users are informed about the nature and level of the port infrastructure charges and at least two months before these come into effect.
  - Article 13(6) + Article 16 (Handling of complaints)

20.Article 16– Handling of complaints (1)

- **Question**

- Does Article 16 PSR entail the obligation to establish a new administrative body to handle complaints?

20.Article 16– Handling of complaints (1)

- **Answer**

- Article 16 PSR: there is no obligation to set up a new administrative body for the handling of complaints.

- What Article 16 requires is that:

  - An effective procedure is in place in each Member State
  - The procedure is functionally independent from any managing body of the port or from port service providers in order to avoid conflicts of interest
  - Member States have to ensure that there is functional separation between the handling of complaints, on the one hand, and the ownership and management of ports, provision of port services and port use, on the other hand.

- Where this authority responsible for handling complaints is located is entirely up to each Member State as long as the functional independence any of the parties of the port business is ensured. It could, for instance, be located with the national competition authority.

21.Article 16– Handling of complaints (2)

- **Question**

- What is the scope of the claims that may arise from the application of the Regulation?
    - Only those that derive from the establishment and application to the specific case of the conditions of access to the provision of the services, of its rate regime or of the rates for the using of the port infrastructures?
    - Or any type of claim related to the specific provision of port services?
- The procedure to process the claims, should it be a specific administrative procedure and different from any other and prior to the judicial procedure?
- In the case of breaches attributable to the Port Administration, can the challenge and revocation of its acts be assimilated to an effective, proportionate and dissuasive sanction?

21.Article 16– Handling of complaints (2)

- **Answer (1)**

- Regarding the scope of the claims that may arise from the application of the Regulation, Article 16(1) of the Regulation states "Each Member State shall ensure that an effective procedure is in place to handle complaints that arise from the application of this Regulation for its maritime ports covered by this Regulation."

- We understand that the scope of Article 16 of the Regulation only covers complaints related to the subject matter and scope covered by the Regulation. The subject matter and scope of the Regulation includes, *inter alia,* the areas mentioned in your consultation request, i.e. the conditions of access to the provision of the services, of its rate regime or of the rates for the using of the port infrastructures.

21.Article 16– Handling of complaints (2)

- **Answer (2)**

- The organisation of port services as outlined in Article 3 of the Regulation, comprises, in turn, the access to the market for the provision of port services in maritime ports and the conditions set out in Article 3 of the Regulation, i.e. minimum requirements for the provision of port services (developed in Articles 4 and 5), limitations on the number of providers (developed in Article 6), public service obligations (developed in Article 7) and restrictions related to internal operators (developed in Article 8).

- The subject matter and scope of the Regulation also includes, *inter alia,* the Port service charges (Article 12) and Port infrastructure charges (Article 13) mentioned in your request.

- As the subject matter and scope of the Regulation does not include further, more specific provisions regarding the organisation of port services (e.g. conditions for the provision of the service, tender documents or licences), the complaints procedure does not cover claims related to these specific rules governing the provision of port services.

21.Article 16– Handling of complaints (2)

- **Answer (3)**

- Finally, Article 16(2) states that "The handling of complaints shall be carried out in a manner which avoids conflicts of interest and which is *functionally independent of any managing body of the port* or providers of port services. Member States shall ensure that there is *effective functional separation between the handling of complaints*, on the one hand, *and the ownership and management of ports*, provision of port services and port use, on the other hand. (…)" (emphasis added). Therefore, as you anticipate in your request, the procedure cannot be located with (…) the competent authority in the sense of Article 2(3) of the Regulation as the functional separation as stated above would not be ensured. The Regulation states in Article 16(1) that "Each Member State shall ensure that an effective procedure *is in place* (…)" (emphasis added) and is silent as to whether this should be an existing or a new procedure. The procedure to process the claims does therefore not need to be a specific administrative procedure and different from any other existing one and it does not need to be processed by a new body to be created specifically for the handling of complaints arising from the application of the Regulation.

22. Article 21 – Transitional measures

- **Question**

- Will existing unlimited land lease contracts that will be modified into limited ones after March 2019 and before 1 July 2025 not be subject to the Port Services Regulations' requirements (tendering procedures) until 1 July 2025?

22. Article 21 – Transitional measures

- **Answer**

- Article 21(1) PSR: The Regulation shall not apply to port service contracts which were concluded before 15 February 2017 and are limited in time.

- Article 21(2) PSR: Port service contracts concluded before 15 February 2017 which are not limited in time, or have similar effects, shall be amended in order to comply with this Regulation by 1 July 2025.

- Article 22 PSR: It shall apply from 24 March 2019.

- Article 21(2) PSR contains the transitional rule that all unlimited port service contracts have to comply with the Regulation by 1 July 2025. This means that these kind of port service contracts need to be amended in order to comply with this Regulation by that date.

- Consequently, this means that the contracts must comply with the Regulation at the latest by 1 July 2025.

23. Outside the scope of PSR

- **Question**

- Is the establishment of maximum durations / time limits / timeframes for licences / port service contracts compliant with EU Regulation 2017/352?

- **Answer**

- PSR does not contain specific provisions on the duration of port service contracts. The Commission services consider that the determination of the maximum duration of contracts is at the discretion of the Member State, provided that national measures do not constitute a restriction of the freedom of establishment or the freedom to provide services (see recitals 11 and 28 of the Regulation) and, moreover, comply with Article 3(3) of the Regulation which states that *"The terms of access to the facilities, installations and equipment of the port shall be fair, reasonable and non-discriminatory."*

Other questions received – Answers in preparation

- 24. Can a shipowner/shipping company take care of for instance mooring of its own ships "in-house" if they happen to have employees in the port that can take care of mooring? Or will they be considered a "service provider" subject to any limitations adopted by the port administration?

- 25. Is charging "port infrastructure charge" for the use of road and rail infrastructure owned by port authority and within port borders in line with the port regulation? According to national law, such road and rail infrastructure (eg. rail tracks) is considered "port infrastructure". The port regulation does not regulate explicitly such issue but it also doesn't prevent such charges.